



**Steve Bullock, Governor**

**Dan Vermillion, Chairman**  
PO Box 668  
Livingston, MT 59047  
406-222-0624  
District 2

**Richard Stuker**  
1155 Boldy Road  
Chinook, MT 59523  
406-357-3495  
District 3

**Tim Aldrich**  
3340 Rodeo Road  
Missoula, MT 59803  
406-542-3144  
District 1

**Logan Brower**  
P.O. Box 325  
Scobey, MT 59263  
406-230-2188  
District 4

**Shane Colton**  
335 Glark  
Billings, MT 59101  
406-670-2374  
District 5

**Martha Williams, Director**  
MT Fish, Wildlife & Parks  
1420 East Sixth Avenue  
PO Box 200701  
Helena, MT 59620-0701  
406-444-3186  
(Fax)406-444-4952

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**Montana Fish,  
Wildlife & Parks**

# Montana Fish & Wildlife Commission

MINUTES

*FWP Montana Wild - 2668 Broadwater Avenue - Helena, MT*

*December 10, 2018*

*Commission Members Present: Dan Vermillion, Chairman, Richard Stuker Vice Chairman, Tim Aldrich, Logan Brower and Shane Colton*

*Fish Wildlife & Parks Staff Present: Martha Williams, Director and FWP Staff.*

*Guests: December 10, 2018 - See Commission file folder for sign-in sheet.*

**Topics of Discussion:**

1. *Call to order and Pledge of Allegiance*
2. *Approval of Minutes of past commission meetings*
3. *Approval of Commission Expenses*
4. *Commission Reports*
5. *Director's Office Report*
6. *Recognition of Janet Ellis Service at Audubon*
7. *A Renewal of the Avista Cooperative Use Agreement*
8. *Unmanned Aerial Vehicles/Drones Biennial Rule*
9. *Motion Tracking Devices Biennial Rule*
10. *Draft Statewide Fisheries Management Program and Guide, 2019-2027 (also referred to as the Statewide Fisheries Management Plan)*
11. *Fishing Access Site/Wildlife Management Area Draft Biennial Commercial Fee Rule*
12. *Addition to Ennis Fishing Access Site*
13. *Madison River and Varney Bridge Fishing Access Site Temporary Closure Rule*
14. *Varney Bridge Fishing Access Site Bridge Replacement Project*
15. *Stevensville Bridge Fishing Access Site Easement Acquisition and Development Region 2*
16. *Big Creek Instream Flow Water Rights Lease Renewal Region 3*
17. *Fishing Access Site Biennial Rule*
18. *Madison River Negotiated Rulemaking Committee Appointments Region 3*
19. *Wildlife Management Area and Fish Conservation Area Biennial Public Use Rules*
20. *Mt. Haggin Wildlife Management Area Addition*
21. *Thompson-Fisher Conservation Easement Amendment to resolve encroachment issue*
22. *2019 Region 5 Mule Deer Season Changes in Hunting Districts 502, 510, 520, 575*
23. *2019 Elk Hunting Regulations in Hunting Districts with Performance Based Shoulder Seasons*
24. *New Rule: Grizzly Bear Demographic Objectives for the Northern Continental Divide Ecosystem*
25. *Petition to Repeal Big Horn Sheep license 330-10 and Amend Big Horn Sheep Conservation Strategy – Gallatin Wildlife Association*
26. *Public Comment for Issues not on the Agenda*
27. *Adjournment*

***1-3. Call to order and Pledge of Allegiance, Approval of Minutes of past commission meetings, and Approval of Commission Expenses***

Chairman Vermillion stated that they had a long agenda today with a break in the middle. We will start with the approval of minutes of past commission meetings, expense reports, and move into a special recognition for Janet Ellis.

Commission Colton motioned to approve the August 2018 Commission Minutes. Vice-Chairman Stuker seconded the motion.

***Motion passes 5-0***

Chairman Vermillion asked if there was a motion to approve expenses.

Commissioner Colton motioned to approve the Commission expenses. Vice-Chairman Stuker seconded the motion.

***Motion passes 5-0***

***4. Commission Reports***

Commissioner Colton stated that he was going to make this brief due to the long day ahead. Chronic Wasting Disease is being closely watched in his district in approximately with Wyoming. He has also been on the phone a lot regarding the issues that are going to be addressed at this meeting.

Commissioner Brower stated that it has been a good deer season in his district. He was fortunate to harvest a nice buck. He would like to thank everyone who did the CWD surveillance along the high line. It was detected but, not a surprise that it was. Tomorrow he will attend the CAC meeting Havre.

Commissioner Aldrich stated that he met with Region 2 CAC. He visited with landowners about the programs that are available and some things that they would like available to them. The Region 2 CAC has had a subcommittee in the past and Dan has been very active with that group. There was a discussion as to why they use outfitters, block management, and other tools.

Commissioner Aldrich also attended a CAC meeting in Region 1. The Legislators met with that group. Director Williams and others were there. He felt that it was an excellent meeting. The Region 1 CAC group is very diverse group and very interested in the programs of FWP. The question and answer period reflected the diversity.

In November, Commission Aldrich attended the Northern Continental Divide Grizzly Ecosystem Sub-Committee meeting in Missoula. It was an interesting meeting. All the specialists from the various agencies and tribes as well as the FWP regions. We have a lot of bears out there and a lot of incidents. He feels that everything was effectively dealt with. He was amazed by the amount of fatalities of bears on the roads. There are many challenges that we still have. He said that he had also went hunting and had the privilege of sharing his harvested deer with a mountain lion.

Commissioner Aldrich attended a meeting in November in Trout Creek with the staff in Region 1. The group in Trout Creek, Outfitters primarily, organized this. There is a lot of concern as to what they perceive as a decline in the amount of deer and elk available. There were also concerns over wolves, mountain lions, and other species. We had a chance to listen and an opportunity to talk. There may be another chance to meet and discuss this more. He had a chance to listen to Jay Kolbe do a mountain lion presentation in Hamilton. Ravalli County Fish and Wildlife Association put together the meeting. He was really impressed with the dialogue, questions, and answers that happened after the presentation. It was well received.

The last week has been very busy with letters and phone calls about the 926F wolf harvest. There were a lot of suggestions about hunting around Yellowstone Park. There were also a lot of comments about the shoulder season that we will be addressing today as well. Another issue was residents that have housing on the Hauser Reservoir are concerned about the amount of traffic between Hauser Dam and the recreation area. Thank you.

Vice Chairman Stuker stated that CWD is a big issue in his region. Three of the hot areas are within 10 miles of his property. Management hunts were approved in Region 4. He attended a meeting in Helena about the Upper Missouri River Management Plan. He has also attended meeting with Walleye Unlimited and would like to compliment Eileen, Eric and Adam for the work that they are doing there. He feels that they are really getting out and visiting with people. They are trying to get a plan together that works for everybody. We know that is going to be tough because it is a multiple species fishery. He feels they are doing a good job trying to pull this all together.

He has also been getting a lot of calls regarding the items on the agenda. He found out that if you Google the Commission, that the old Commission members come up and the information is not up to date. The former Commissioners have been getting some of the calls from out of state.

Chairman Vermillion stated that he has been getting many phone calls about the sage grouse and Montana's work to keep the bird off the list. It is getting undercut by the Department of Interior's opening that habitat up to oil and gas drilling. There is a lot concern about that as the State of Montana has done a good job of keeping it off the list. Getting the birds back to numbers that everyone was comfortable hopefully, will not change. He met with Department about Legislature in Bozeman a couple of weeks ago. He thinks it was apparent that there were some tough challenges that the Department is aware of. He took his son hunting and he harvested his first deer in the same coulee that he did 39 years ago.

December has been a month of many phone calls. These were about many of the issues that we will discuss today.

#### ***5. Director's Office Report***

Director Williams stated that she has taken note on the comment about the Google search. She believes that FWP has been firing on all cylinders. She feels like the divisions and regions are starting to work well together. She thinks that they have had a successful end of big game season. She wanted to thank everyone for attending the CAC meetings. There are two more coming up in Regions 6 and 7. Most of the Citizens Advisory Committees have been holding legislature open houses. She was impressed by the engagement of everyone involved. Today's agenda really reflects the breadth of what we are working on right now. It covers all our divisions. For example, we were holding the automated licensing hearings and amazed how many people attended those. There was a transportation summit with the Department of Transportation, Fish, Wildlife and Parks and a number of non-profits and NGOs. It was really inspiring and a lot of promising movement in the future. There was also the Outdoor Recreation Summit in Kalispell. Everyone who went to that said it was inspiring and great. There will be a Parks in Focus meeting in Great Falls and look forward to going to the meeting. I think brevity would help today.

#### ***6. Recognition of Janet Ellis Service at Audubon***

Chairman Vermillion stated that they would like to take a moment to recognize Senator Janet Ellis, Senator District 41, for all her work with the Audubon. A lot of non-consumptive users and non-consumptive species that we manage.

Director Williams stated that she would read a brief paragraph and ask Janet to come up. Why we are doing this special appreciation for Janet is that she has been a prominent figure and advocate for wildlife habitat and conservation in Montana for over three decades. One of her earliest accomplishments was the commitment to the establishment of nongame tax check off in 1983 to provide alternative funding more than 500 species of nongame wildlife. She continued to tout the importance of game management to the legislature with protections against commercialization of several nongame wildlife species. Janet pulled together the experts and the literature by science-based recommendations for habitat, wildlife, riparian areas, model subdivisions regulations, and wind energy guidelines. She has always been an advocate for the State Bird Working Group, the Montana bird Conservation Partnership and has been critical in ensuring leadership for these groups. Janet has worked with Fish, Wildlife and Parks in many capacities, including the exotic species classification and review committee as well as the greater sage grouse habitat advisory council.

Janet has recently retired from her long career with Montana Audubon. Montana Fish, Wildlife and Parks would like to show their appreciation of her continued support for our mission and continuance to highlight Montana wildlife and

habitat. We are grateful for your continued legacy. Thank you. As a token of our appreciation, we would like Janet to have this plaque. Janet thanked everyone.

#### **7. A Renewal of the Avista Cooperative Use Agreement**

*This proposal would renew, the current Cooperative Management Area agreement with the Avista Corporation for property in Sanders County for 2019 and 2020. This is a recreational area heavily used by the public along the Clark Fork River near Thompson Falls. The Cooperative Management Agreement rules would provide for the enforcement of public access rules for camping, fishing, hunting, boating and other outdoor activities during parts of the year that fall outside of the general fall hunting season. Several other Avista properties would remain in the Block Management program for hunting. This cooperative use agreement has worked well for the past two years. Public comment can be taken at this meeting or during a subsequent period if the commission requires it.*

*Without adoption of this proposal, FWP would not be able to operate under a special use agreement and would only provide enforcement during the block management season. Enforcement efforts could be hampered if violators cannot be prosecuted outside of hunting season, potentially resulting in decreased access on Avista lands in Sanders County. FWP proposes the Commission approve this agreement. This rule will result in continued free public access on Avista lands year-round.*

Phil Kilbreath, Operation Sargent, FWP, stated that this is a renewal that we do every couple of years for Cooperative Management Area with the Vista Corporation for property in Sanders County for 2019 and 2020. This is a recreational area heavily used by the public along the Clark Fork River near Thompson Falls. The Cooperative Management Agreement rules would provide for the enforcement of public access rules for camping, fishing, hunting, boating and other outdoor activities during parts of the year that fall outside of the general fall hunting season. This agreement has worked well for the past two years. Public comment can be taken at this meeting. A subsequent comment period can be taken if the commission requires it.

Without adoption of this, we would not be able to operate under a special use agreement and would only provide enforcement during the block management season. FWP proposes the Commission approve this agreement. This rule will result in continued free public access on Avista lands year-round.

***Motion: Commissioner Aldrich moved, and Commissioner Colton seconded the Fish and Wildlife Commission adopt the proposed Avista Cooperative Management Area Biennial Rule.***

Chairman Vermillion stated that this is a proposed and will ask for public comment and comment from the Commission.

No comments.

Chairman Vermillion stated that in reading over the comments that this is a process that is working really well. We want to thank Avista for working with the Department to provide this much access for that part of Montana. Thank you Avista very much.

***Motion Passes 5-0***

#### **8. Unmanned Aerial Vehicles/Drones Biennial Rule**

*The commission has previously adopted the following language:*

*The use of unmanned aerial vehicles (UAV) for the purposes of hunting is prohibited.*

*The intent of this language unclear. In talking with commissioners, FWP employees have been told the intent of the rule was to not allow the use of UAVs/drones for the purposes of hunting within the same hunting day after a UAV/drone has been airborne. Additionally, there have been questions from the public as to whether they can use*

UAVs/drones to film their hunts. The public has not had an opportunity to review or comment. Public comment should be taken on this matter at this meeting.

The department recommends the commission amend the language to read as follows:

*It is unlawful for a person to use an UAV/drone for the purposes of concentrating, pursuing, driving, rallying, or stirring up any game animal. A UAV/drone may not be used to locate game animals for the purposes of: hunting those animals during the same hunting day after a UAV/drone has been airborne or providing information for another person for the purposes of hunting those animals within the same hunting day after the UAV/drone has been airborne. UAVs/drones are not allowed to film a hunt.*

Phil Kilbreath, Operation Sargent, FWP, stated that this is an updating of rules that the commission has previously adopted which states the use of unmanned aerial vehicles (UAV) for the purposes of hunting is prohibited. The intent of this language is unclear and somewhat vague. In talking with commissioners, FWP employees have been told the intent of the rule was to not allow the use of UAVs/drones for the purposes of hunting within the same hunting day after a UAV/drone has been airborne. Additionally, there have been questions from the public as to whether they can use UAVs/drones to film their hunts, scouting, and a variety of other topics. We have not done public comment on this. Public comment should be taken at this meeting.

Leaving the language as it is would keep things the way that they are. It is vague and there is no clarification. This would continue to leave us with vague answers for the public. This is a consistent interpretation issue for Enforcement. We would like to recommend that the language read as follows:

It is unlawful for a person to use an UAV/drone for the purposes of concentrating, pursuing, driving, rallying, or stirring up any game animal. A UAV/drone may not be used to locate game animals for the purposes of: hunting those animals during the same hunting day after a UAV/drone has been airborne or providing information for another person for the purposes of hunting those animals within the same hunting day after the UAV/drone has been airborne. UAVs/drones are not allowed to film a hunt.

***Motion: Commissioner Colton moved and Commissioner Brower Seconded that the commission adopt the UAV/drone biennial rule as proposed by the department.***

Chairman Vermillion asked for comment from the Commission.

Commissioner Colton wanted to thank the Department for being proactive.

Chairman Vermillion stated that these definitely can be used for these sorts of things. It is always a challenge to stay in front of the technology and creative ways to use it.

***Motion passes 5-0***

#### ***9. Motion Tracking Devices Biennial Rule***

***Montana Code Annotated 87-6-401(1)(d) Unlawful use of equipment while hunting states, A person may not while hunting, possess any electronic motion tracking device or mechanism, as defined by commission rule, that is designed to track the motion of a game animal and relay information on the animal's movement to the hunter. A radio-tracking collar attached to a dog that is used by a hunter engaged in lawful hunting activities is not considered a motion-tracking device or mechanism for purposes of this subsection (1)(d).***

***"Hunt" means to pursue, shoot, wound, take, harvest, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, taking, harvesting, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take or harvest by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.***

Previously the commission has defined and adopted the following regarding motion tracking devices;

This includes, but is not limited to:

1. Remote operated camera or video devices.
2. Seismic devices.
3. Electronic trip wires, photo beam or laser devices used to activate tracking or recording devices.
4. Sound amplification devices other than normal hearing aids used regularly by hearing impaired individuals.
5. Thermal imaging devices.
6. Satellite and radio-telemetry devices.

This definition does not include all current technology or address advances in technology.

The language "This includes but is not limited to:" is very vague and therefore open to inconsistent interpretation. The public has not had an opportunity to review or comment. Public comment should be taken on this matter at this meeting. Leaving language as is. However, this presents potential interpretation and enforcement challenges for game wardens as well as legal challenges. The department recommends the commission amends as follows:

Remove the language "This includes but is not limited to:" and amend the definition to read:

"Remote operated camera or video devices capable of transmitting real time information, pictures or videos; seismic devices; thermal imaging devices; satellite and radio telemetry devices."

Phil Kilbreath, Operation Sargent, FWP, stated that the motion tracking device biennial rule amendment as well as the unmanned aerial vehicle biennial rule amendment both came out of regulation review committee that the Department took on to make an effort to make sure we were providing the best regulations for the public following the law. Both are regulations that came out of that. With motion tracking devices, Montana Code Annotated 87-6-401(1)(d) Unlawful use of equipment while hunting states, A person may not while hunting, possess any electronic motion tracking device or mechanism, as defined by commission rule, that is designed to track the motion of a game animal and relay information on the animal's movement to the hunter. A radio-tracking collar attached to a dog that is used by a hunter engaged in lawful hunting activities is not considered a motion-tracking device or mechanism for purposes of this subsection (1)(d).

"Hunt" means to pursue, shoot, wound, take, harvest, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-10, or using a dog or a bird of prey for the purpose of shooting, wounding, taking, harvesting, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take or harvest by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

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This definition does not include all current technology or address advances in technology. The language "This includes but is not limited to:" is very vague and therefore open to inconsistent interpretation. The public has not had an opportunity to review or comment. Public comment should be taken on this matter at this meeting. Leaving language as is. However, this presents potential interpretation and enforcement challenges for game wardens as well as legal challenges. The department recommends the commission amends as follows:

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“Remote operated camera or video devices capable of transmitting real time information, pictures or videos; seismic devices; thermal imaging devices; satellite and radio telemetry devices.”

***Motion: Commissioner Colton moved, and Commissioner Brower seconded the Fish and Wildlife Commission adopt the proposed motion tracking devices biennial rule.***

Chairman Vermillion stated that this is going out for public comment and any public comment today on this won't need to go through the administrative process. This is a final on the agenda item. There will be public comment on this today.

No public comment.

No Commission comments.

***Motion Passes 5-0***

***10. Draft Statewide Fisheries Management Program and Guide, 2019-2027 (also referred to as the Statewide Fisheries Management Plan)***

*The first Statewide Fisheries Management Plan was completed in 2013 and provided a summary of Fisheries Division programs and how fisheries are managed across the state. The plan was not prescriptive, in that it did not propose specific management actions if specific goals or objectives were not met. Since the document functions differently than waterbody or species-specific management plans, staff is proposing a name change for this draft to the Statewide Fisheries Management Program and Guide 2019-2027 (Guide). The Guide will provide the framework for how programs within the Fisheries Division function and outline how fisheries are managed across Montana. The Guide contains two parts: Part I summarizes specific programs within the division and how those programs support fisheries activities; Part II is organized by drainage and provides an overview of fisheries priorities and challenges within each drainage and outlines priorities for primary waterbodies within drainages. The Guide provides updates to fisheries programs and addresses new issues that have occurred since the first plan was completed in 2013. Drainage and waterbody-specific issues and priorities are also updated in the Guide. The Guide is intended to be used as a reference for legislators during biennial legislative sessions, to be used to inform fishing regulation setting during four-year review, and to serve as a reference to the angling and recreating public to understand fisheries programs and how aquatic resources are managed.*

*A public comment period will occur if the commission approves the draft plan for public comment. Comments received will be reviewed, analyzed, and summarized by FWP staff. Practical comments that fit within fisheries management and program function will be considered for the final Guide. Copies of all comments received will be provided to the commission. The commission could choose to approve the draft Guide for public comment. The commission could choose to not approve the draft Guide and it would not be released for public comment.*

Eileen Ryce, Fisheries Administrator, stated that the Department is asking that the guide be released for public comment. The Statewide Fisheries Management Program and Guide was formally known as the Statewide Fisheries Management Plan which was approved by the Commission in 2013. The first major revision to point out is the name change to program and guide instead of plan. The document is not prescriptive in that it does not propose specific management actions. Because the document functions differently than waterbody or species-specific management plans therefore changing the document to read program and guide. The guide provides the framework for programs within the Fisheries Division function and outline how fisheries are managed across the state. The guide contains two main parts. Part I summarizes the programs within the division and how they support fisheries activities. Part II provides an overview of fisheries priorities and challenges for each drainage in the state. The guide is meant to be used for informing fishing regulation settings, serve as a reference for recreating public, help guide management decisions, and be used by administrators and legislators to help inform priorities.

Part I has been significantly revised from the first addition. The main revision was to make the guide consistent to the Department's new vision and guide. Updated program information that has changed significantly since 2013. This

includes more emphasis on the Aquatic Invasive Species Program, more emphasis on water recreation, and revise processes. It also contains updated biological status of species. Part I was also edited to be more user friendly.

Changes to Part II include any necessary updates to the Fisheries programs by drainage and includes any new challenges or issues that have arisen since 2013. We have also incorporated recommendations from the midterm evaluation in 2016. If the Draft Guide is approved to go out for comment, there will be a minimum of a 30-day comment period.

We would like to thank Dale Gilbert for letting us know that several members of the public will be providing comment on the status of walleye. Mr. Gilbert has made us aware of a growing interest to change the classification of walleye in the guide from introduced to native. We have contacted both the Montana Natural Heritage Program and the National American Fisheries Society on how such a request would be handled. The designation could not be changed by simply changing how the species is designated in the Program and Guide. The Montana Natural Heritage Program told us if they were to receive the request to consider reclassification of a species, they would conduct an expansive literature review before making a determination. A senior zoologist with the program has indicated that we should use caution in using broad scale range delineation maps. Genetic work is limited for walleye in Montana but, the limited work that has been done has indicated the walleye were introduced.

We are also discussing options with the American Fisheries Society (AFS). One option we have is to present information at the Montana Chapter of AFS meeting in January. Those advocating for native species could potentially present information and we could seek input from the chapter. Over the week end we also had conversations with nationally recognized experts that we were put in touch with by the AFS. We will continue to research the status of walleye and can provide an update in February. Our recommendation today is for the draft guide to be approved and put out for public comment. If approved for public comment, our intent would be to present a final document at the February or April Commission meeting. The final version including all the maps, will be reformatted to meet the Departments new branding standards.

***Motion: Commissioner Brower moved, and Commissioner Colton seconded the Fish and Wildlife Commission approve the draft Statewide Fisheries Management Program and Guide 2019-2027 and collect public comment.***

Comment from the commission.

Vice Chairman Stuker asked about the classification whether the walleye is native or introduced. How does that affect management within your department? Do we manage them differently based on introduced or native? He would like the correct classification but, is more concerned about how the management comes about.

Ms. Ryce answered that the biggest change that would occur would be in the Program and Guide on page 9 which lists all the species we currently manage. Right now, walleye is listed as introduced and that would change to native. Besides that, there would be little or no change to management actions. We already manage for walleye populations in several drainages. That would continue. There have been questions about emphasis in our hatchery's programs. Currently our production of warm water fish primarily walleye, is about the quarter effort in the hatchery program and the other quarter being to native species as well as the rest to rainbow trout. We would consider that staying the same. In the waters where walleye is managed in a multi-species fishery, we would continue to manage those primarily with the management plans that are in place such as the Missouri Reservoir. This would include the management plan for Holter, Hauser, and Canyon Ferry. We would continue to manage as we currently are.

Vice Chairman Stuker stated that he had a follow up question. Through the upper Missouri River management scoping, the one question that he was asked more than any was about the section of river below Holter. We manage that for trout as a trout fishery. The comments dealt a lot with the walleye below that and the unlimited take. He is aware that was passed by the commission and hate to comment on something that he was not part of. This has been brought up so many times. He was told that when the original proposal came in Region 4 had a 25-bag limit. He is curious if anything has changed in your mind in this period of time or if that is something the Department wishes to stay with.

Ms. Ryce answered that was a good question. That is not part of the Program and Guide that is in front of you. It is also not part of the Missouri Reservoir Management Plan. That part of the river is outside the scope of the management plan. Internally we have already decided to put that regulation on our list review for the upcoming regulation cycle.

We will start that process soon. We will go out for scooping for change of the regulation. We expect to hear a lot of comments on that one. We would address it at that time with the regulation change coming in August.

Chairman Vermillion stated that he had a question about the Department's determination about whether the walleye are native to Montana. He assumes that right now they are classified about the same as brown trout and rainbow trout that were brought from elsewhere and is a viable part of our fisheries.

Ms. Ryce answered that was correct. They are listed as introduced. Those species arrived by different means. They are also managed as a game fish. That wouldn't change based on the native designation.

Public comment.

Dale Gilbert, Greeted the Commission and gave a handout to them. He stated that he had several concerns about the plan. He would ask the Commission to not approve the plan. He thinks that it is a significant issue whether walleyes are considered native or not. In the handout, it identifies whether walleyes are native or not. It clearly shows from multiple sources that the native range of walleye includes east of the divide in Montana. It would affect other parts of the Program and Guide. The native species get different treatment in the state and he does not see that in places in Helena. He'd like to advocate some major changes for walleye and it would make a significant difference.

It is not right to put this up for public comment unless the public gets the input they should have. There are several publications regarding studies that have been done in the last 10 years using advanced technologies for scientific analogies and studies document the range. These are from the British Columbia Fisheries Division in Canada. One is from the Alberta Fisheries Division in Canada and most importantly the American Fisheries Society publication that was done 2011 that was largely funded in part by Fish, Wildlife and Parks. He has a hard time with why we can't acknowledge the information that is out there today. The second issue he has he won't discuss further as it is all in the handout. As for the draft management plan that deals with the four-year cycle regulation changes he has provided some information on how that cycle has proven to be not very effective in maintaining our fisheries.

If the Commission would look at the chart that was provided in the handout, you will see how that has gone downhill significantly year after year. We have asked for some changes, but the Department has hung their hat on this thing that says that they will do this every four year. The other issue he has is the perch fish at Holter has gone down significantly over the last several years. By the time this is properly addressed they will be gone. That is disgusting to me. He is asking that the definitions be revised including a trophy designation or description and revise what it says about a quality fishery. There seems to be some confusion over what people want and what a quality fishery really is. There have been studies done by other entities and organizations about this.

The last thing is the Draft plan on page 245 deals with the language and the management type that is used and provides direction for the Missouri River section below Holter Dam. It says suppression. Suppression, by definition means to eradicate or suppress the numbers. The fish chart that he gave out shows that puts in perspective the number of trout that are handled in fishing every year in that river section. It also shows the number of walleyes. The numbers are such that you can't even see that they exist. They are a small part generally less than one percent of the total population of fish that are samples in that river section. The problem in the past is that was a lack of documentation to establish a limit. What it has done is adversely affected the fishery below. It has affected the fishery at Holter and he has seen people at the check station filleting over what the limit is and claiming they caught the fish below the dam. You create by having a no limit and a no passion limit below the Holter what people derive as no limit throughout Holter. It's not acceptable. He would like to see it resolved concerning native to nonnative and ask that the Commission not approve this until it has been properly done.

Matt Zeto, Helena, greeted Commission and stated that Commissioner Stucker said that if you believe in something bring the scientific evidence that proves you believe in something. He stated that he found a book that shows walleye are native to Montana. This is as recent as 2010. The studies that I found through Fish, Wildlife and Parks website that says walleye are non-native. This goes back to 1971, 1995, and 2006. They go by a study by William Gold dated 1995. The native species in the book that he has with him is 2010. Obviously, there is some new scientific data out here. He urges the Commission not to pass the proposed management guide. He believes that it needs more work. The native species part is a huge part of it. Thank you.

Richard Tramp, Helena stated that he lives near the Silos. He has fished for walleye for over 30 years. He always wondered about the information that Matt and Dale has brought forward at this meeting. It would be nice if we had some answers. Thank you.

Roger Terwilliger, Helena, urged the Commission not approve the Fisheries plan. Please consider the recent research that has been done.

Scott Keller, President, Walleyes Unlimited, stated that he recommends that the Commission not move forward with the plan. He feels that it is important to look at the fish more often and with more depth. Thank you.

Nick Gevoc, Montana Wildlife Federation, stated that he wouldn't argue whether walleye are native or nonnative. He wrote his thesis on fish that Lewis and Clark caught and walleye were not mentioned. But, that does not mean that they caught every species of fish that was. He asked the Commission that whatever they do adopt, please make sure that it has the scientific integrity. Colorado declared mountain goats a native species when there were never goats there previously. We manage for all kinds of nonnative species too. Thank you.

Mike Sedlock, Board Advisor, Walleye Unlimited states that the Executive Director, Bob Gilbert, was not able to attend. He asked that this letter be read on his behalf. He wrote about the Statewide Fishery Plan and it being ready for public comment. Walleyes Unlimited feel that are things that need to be addressed and change in wording of the draft. Several of our members will be giving comment addressing these concerns. The American Fisheries Society has a publication that in 2011 provided information that studies done in British Columbia over a period of years, concluded that the native range walleyes included the Continental Divide to the eastern part of Montana. Although, there is a lack of statistical data, this area is in the native range walleye should be considered a status of high priority.

Based on the journals of the Lewis and Clark Expedition, there were no reports of catching walleye in the Missouri River system. Just because a species was not caught or seen, does not mean that they were not there especially in their native range. Because the expedition did not see, or catch does not mean that they were not there. For example, paddle fish are listed as a native Montana Species but were not seen on the expedition. He respectfully asks that FWP remove the language of the draft referring to walleye as not being native to Montana. We ask the Commission to hold approval until this had been changed before it is sent for public comment. This is an important issue that need to be resolved. With scientific research and probability reach a proper solution. There are other concerns that will be addressed by members as well. Walleyes Unlimited does support resolution to these concerns. Thank you on behalf of Bob Gilbert, Executive Director.

Joe Hovely, Townsend, stated that he likes to fish for walleye and has fished Canyon Ferry for many years. He thinks that it is getting depleted. He hopes the Commission will re-read the new policy and reconsider the walleye limits for Canyon Ferry. Thank you.

Austin James, Walleye Foundation, stated that draft plan needs to have a structure so there can be positive public comment. The problem as far as the chapter goes is the foundational draft that we have before us (and a lot of works has been put in to this), it goes on a native verses nonnative structure that give priority to native species. When we look at what is native or nonnative based on a 1995 science, since that time there had been new science that was funded as FWP as one of the primary sources to consider whether walleye is a native or nonnative species. In order for the member to be able to comment, it goes back to the fundamental difference of native or nonnative.

If the science is ignored or missed in the draft, then the comment period is undermined. Going forward you would need to go to another comment period and thereby extending the management process. We ask that the Commission send it back and look at the science and incorporate it in the draft. This would need a larger public comment period allowing everyone to comment the management directions. Thank you.

### **Region 3 Bozeman**

Lance Kresge, Gallatin Walleye Unlimited, stated that anytime there is scientific information he doesn't feel that it possible to move forward with any plan that includes or addresses the science. Thank you.

### **Region 1 Kalispell**

Warren Illi, Flathead Chapter of Walleyes Unlimited, stated that he fishes all over the state of Montana with other members. He has many comments on this but, will limit to just a couple. It is his understanding that this plan is identical to the plan of 2013. This is just an extension of that plan until 2027. He was at a commission meeting in 2013. The plan at that time was drafted entirely by FWP without any meaningful public input. At the 2013 meeting, there were only 4 or 5 members at the meeting. Two or three were from the Walleye Club and the rest from Trout Unlimited. He remembers remarking to an FWP employee about low public turnout. The FWP employee responded by saying that this was the best turnout of all the public meetings. The meeting that occurred the night before in Great Falls only had one attendee.

Montana has nearly 300,000 resident and nonresidents that have a keen interest in fishing. He feels that FWP does not want public involvement. They seem to have a problem following the Montana Environmental Policy Act that mandates a lot of public involvement in major agency decisions. This plan covers all 94 million acres of Montana, 54 thousand miles of streams and 700 thousand acres of ponds, lakes, and reservoirs, as well as millions of dollars of tourist income. This deserves compliance with the Montana Environmental Policy Act.

Public involvement for 2013 was almost nonexistent. The proposed extension until 2027 has a level of almost no public involvement. He thinks it is by design and thinks it is wrong. The fish and game resources of Montana belong to the people of Montana and they deserve the opportunity to comment. My second comment deals with the issue of walleye being native or nonnative. He deals with the Fish and Wildlife employees a lot and all he hears is science, science, science. They feel everything must be managed with science. Societies and organizations for fisheries such as the American Fisheries Society show that east of the divide is native habitat for walleyes. He feels that FWP refuses to identify this fact. They continue to list the walleye as a nonnative fish and discriminates against them. He is concerned that FWP is discriminating against the walleye and the preference given to the nonnative rainbow and brown trout at Holter Dam. Sections of the Missouri have bag limits designed to exterminate the native walleye in favor of the nonnative fish.

He asks that the Commission send the plan back to FWP to comply with the Montana Environmental Policy Act.

Chairman Vermillion asked for Commission comment.

Commissioner Brower asked if he could get clarification about how this draft plan is a proposal and how the process works as well as any modifications that can be made along the way with public comment.

Ms. Ryce stated that was correct. That this is a draft and if approved today would go out for public comment. It is not yet being released for public comment as we tried to get this out early so people could see it. This would be the start of the comment period.

Chairman Vermillion stated that to follow up on Commissioner Brower's comments, he assumes that through the course of public comment that the Department working with the Montana Natural Heritage Program which is the typical protocol for determining whether something is native or not.

Ms. Ryce stated that was correct. It is precisely why we raised the walleye question on our presentation. We are appreciative to Mr. Gilbert who brought this to our attention. A week or so ago, it was brought to our attention that this was going to be a topic of attention. Since then we have been working with AFS and the Natural Heritage Program to do what the public are telling us about the science. It is our intent. Over the weekend, Eric Roberts and myself were talking with experts around the country and will continue to do so until we get this resolved.

Chairman Vermillion stated that until FWP discovers the information and can be incorporated into the plan after public comment is received.

Ms. Ryce stated that is why it was brought up today to incorporate it during the public comment period. We would like to have it resolved before we bring this to you for a final.

Commissioner Stuker asked how long it is expected to take to find out if walleye is native or an introduced species.

Ms. Ryce stated that she would like to see results soon. Things can take longer than expected. She advised that she is hoping to know by February. We are tentatively planning to bring the final to the Commission in February. We have already discussed possibly bringing this to you in April. We will be able to provide an update in February.

Commissioner Stuker clarified if a final is not ready in February then it will be brought to us in April?

Ms. Ryce stated that they can have ready what the Commission wants.

Commissioner Stuker stated that the suppression was brought up for nonnative, how will that affect the comments (this might be a question for Legal) in regard if we change the designation to a native designation in February which is no longer suppression in some areas. Will that change the plan? Will that have to go back to for revisions?

Ms. Ryce stated that once they get the designation clarified, they will go back through the plan page by page. We will make sure everything is consistent. If it means that we have to change the suppression line, then we will.

Commissioner Stuker asked Legal if the Commission were to move the plan forward today, can we include somewhere in the public comments the issues that were brought up? Can the Commission make changes when the final comes in? We have heard comments on us reviewing the four-year plan and having us review it more often than four years and defining the quality of fisheries. Can that go out now if the plan is approved and through the public comment period and the comments received? Can we amend this when it comes back as a final without having to go through the whole process again?

Rebecca Dockter, Chief Legal Counsel, Fish, Wildlife and Parks, stated that the commission may do this. The usual way that it works is the guide is sent out. The comments that come in should guide how you would revise the final. If we were constantly having to go out for public comment each time something else came out, we would be in a constant cycle of proposal and comment. It's contemplated that we would take into consideration comments and revise accordingly. She thinks the comment and the Commission raising the issues and then raise the issues to the public to comment on them. The guide itself is intended to be the umbrella and any matters that could logically, and reasonably fall can be commented on. In the end, they can be reasonably incorporated. It is not cut and dry. As Ms. Ryce mentioned, we will look at the guide and make sure that it is not too far afield from any of the comments and not too far afield from what was proposed. If that is not the case, we can look at it for that purpose.

Director Williams stated that she has noticed as an agency that more and more when we put forth a proposal, there is concern that there is no room for public comment. She thinks that is a shift in policy or public engagement that we are trying to adapt to. The way proposed rules are covered under Montana Environmental Policy Act (MEPA) is that you do send it out for public comment, can reply and adapt the final to address the policy. We have never had a second or third step and she thinks that people are asking for that. We are figuring out how to respond to that. Specifically, under the Montana Environmental Policy Act and our public comment this adheres to the requirement. We get public comment and you have the ability to respond. We have never had another system where there have been other additional tiers. That is what is coming up, so we need to figure out how to respond.

Vice Chairman Stuker stated that a good point was made. There is a lot of misconception that he has been finding when he was going around with Eileen and Eric that individuals do not know the process for public comment. That is creating some angst in the communities. They think the Commission, or the Department doesn't listen. That is far from the case. Somehow, we need to be more proactive in how we get the information out to people, so they know what the process is, so they know it and are comfortable coming to us. Thank you.

Chairman Vermillion added that it is important to remember that walleye treated now as an introduced fish. He always looked at walleye as where they were legally introduced through the Commission's power versus where they just somehow showed up. Whether they are native or nonnative and that rainbow and brown trout get treated with a high amount of respect. The issues lie with rainbow and brown trout have conflict areas below Holter Dam. How far below Holter Dam do you go before it starts affecting the warm water fishery by Cascade to Great Falls. Those are mostly regulatory approaches, and this is a state management plan. Whether walleye are native or nonnative does not matter to me but, he thinks that we should follow the science. He trusts the Department to work with the prevailing and most up to date sciences as to what fish are native or nonnative. He encourages the Commission to approve this and to put into public comment phase. Let the Department do its work and determine if the information is new or not. You're

still going to have that regulatory rub where the rainbow, brown trout, and walleye start to mingle in a fishery. Whether the walleye is native, or nonnative will still have impact on socioeconomic discussion about how we want to manage the particular stretches of river. He would like to see the plan moved forward.

Commissioner Aldrich stated that he would like to comment that we have three things going. The four-year plan, the Upper Missouri River Plan, and now the Program and Guide. He thinks the guide should be some kind of umbrella document which is probably what it is intended to be. The specific management emphasis and the ways of doing that and the other levels of plan he hopes that FWP will work on. The four-year plan and the reservoir management and other levels of plans, he would hope that they would not put anything in the guide that removes alternatives to preserve. He approves moving forward with plan and sending to public comment.

Vice Chairman Stuker stated that based on the comments that he heard today, he will vote to move this forward. But, when we get the final, if some of the questions have not been answered and certain things are not put in for public comment, then he will vote in opposition to it when the final is presented.

Chairman Vermillion stated that all those in favor of starting the public process with the statewide plan to go out for public comment through the traditional means as required by the Montana Environmental Policy Act approve by saying "I".

***Motion Passes 5-0***

#### ***11. Fishing Access Site/Wildlife Management Area Draft Biennial Commercial Fee Rule***

*The Fish & Wildlife Commission Commercial Use Permit Fee Rule sets the permit fees for commercial use occurring at fishing access sites, fish conservation areas, wildlife management areas, and FWP administrative sites. Changes were last made to the fee rule in 2017 and were specific to photographers and film crews. If the commission proposes the commercial use permit fee rule, FWP will announce and conduct a public comment period. This will be advertised through statewide and regional press releases.*

*The commission could choose to propose the fee schedule as recommended by the department or propose changes of their own. In any event, this is a biennial rule and must be reauthorized following public comment. FWP recommends that the commission propose a commercial use permit biennial fee rule for 2019/2020 that has no changes from the current fee schedule. The changes made in 2017 have worked well and the department recommends they remain unchanged for now, pending further discussions with FAS commercial users and an evaluation of administrative costs.*

Eileen Ryce, Fisheries Administrator, stated that The Fish & Wildlife Commission Commercial Use Permit Fee Rule sets the permit fees for commercial use occurring at fishing access sites, fish conservation areas, wildlife management areas, and FWP administrative sites. Changes were last made to the fee rule in 2017 and were specific to photographers and film crews.

We propose that the fee schedule be released for public comment with no changes to the current fee schedule.

***Proposed Motion: Vice Chairman Stuker moved and Commissioner Aldrich seconded that the commission propose a commercial use fee rule as recommended by the department.***

No public comment.

No Commission comments.

***Motion passes 5-0.***

#### ***12. Addition to Ennis Fishing Access Site***

*The 70-acre Ennis FAS was initially purchased and subsequently developed as a fishing access site in the late 1950s. Small additions were acquired to secure access in 1966 and again in 1999, making a total of almost 77 acres. The access road was aligned along the northern most boundary of the property before reaching the river where it turned south following the river bank. FWP was recently informed by the adjacent landowner to the north that a portion of the access road and a FWP vault latrine are located on his property. Upon verification of the road location and latrine in relation to the property boundary by a licensed surveyor, FWP is proposing to acquire the land at fair market value. The landowner's asking price is \$18,000 for approximately 7 to 8 acres. The other option is to move and reclaim a section of the access road and relocate the latrine. A rough estimate for this alternative is approximately two-thirds the cost of purchasing the property. It's also no guarantee that the latrine could be successfully relocated without damaging it. Because the cost of a new vault latrine is approximately \$15,000 delivered to the site, FWP feels that the best option for resolving this is to acquire the additional 7 to 8 acres of land. Doing so will also resolve a trespass issue FWP wasn't aware of up until this point since the 7 to 8 acres of private land includes additional river frontage on both sides of the bridge that has historically been used by the public.*

*There has been no public involvement up to this point. If endorsed by the commission, FWP will initiate its due diligence process that includes public notification and a 30-day public-comment period to the environmental assessment. All alternatives will be evaluated in the EA. FWP recommends that the commission endorse the department's request to pursue negotiations with the landowner to resolve FWP's road and FAS development trespass on private land.*

Eileen Ryce, Fisheries Administrator, stated that this is an endorsement for the Ennis Fishing Access Site. The 70-acre Ennis FAS was initially purchased and subsequently developed as a fishing access site in the late 1950s. Small additions were added in 1966 and 1999 making a total of 77 acres. Recently we were made aware by an adjacent landowner that a portion of the access road and an FWP vault latrine are located on his property. This was confirmed by a licensed surveyor.

The landowner's asking price is \$18,000 for approximately 7 to 8 acres. The other option is to move and reclaim a section of the access road and relocate the latrine. A rough estimate for this alternative is approximately two-thirds the cost of purchasing the property. It's also no guarantee that the latrine could be successfully relocated without damaging it. Because the cost of a new vault latrine is approximately \$15,000 delivered to the site. Because the cost of a new vault latrine is approximately \$15,000 delivered to the site, FWP feels that the best option for resolving this is to acquire the additional 7 to 8 acres of land. Doing so will also resolve a trespass issue FWP wasn't aware of up until this point since the 7 to 8 acres of private land includes additional river frontage on both sides of the bridge that has historically been used by the public.

FWP recommends that the commission endorse the department's request to pursue negotiations with the landowner to resolve FWP's road and FAS development trespass on private land.

***Proposed Motion: Vice Chairman Stuker moved and Commissioner Aldrich Seconded that the commission authorize the department to pursue negotiations with the landowner for the acquisition of 7 to 8 acres of land adjacent to the Ennis FAS.***

No Commission comments.

No public comment.

***Motion passes 5-0.***

### ***13. Madison River and Varney Bridge Fishing Access Site Temporary Closure Rule***

*The Montana Department of Transportation notified FWP in 2016 of its intention to replace the Varney Bridge over the Madison River on Secondary 249, approximately 8 miles south of Ennis beginning April 2019. MDT will require the contractor to provide safe public float passage, including a 40-foot wide by 6-foot high effective opening between in-stream construction-related obstructions and appropriate navigational signage and hazard posting. MDT*

*anticipates that there will be times when construction activities will create unsafe conditions for the public and requests that FWP be prepared to temporarily close the river and/or the entire Varney Bridge Fishing Access Site on a short-term basis to all use in the proximity of the construction site. MDT has asked the commission to authorize a rule that would let FWP, in consultation with the local commissioner, temporarily close the river and/or the Varney FAS on a short-term basis during the construction timeline March 15, 2019, to Nov. 15, 2019. The contractor, with confirmation from MDT, would be required to notify FWP of each occurrence of such a request. FWP would only consider closures in the interest of public safety and if there are no other reasonable alternatives available.*

*Upon proposal of the rule, FWP would invite public comment and report back to the commission with a final recommendation. The commission could choose not to propose a rule that would allow temporary short-term closures of the river during construction. Without this proactive option, emergency conditions might precipitate adoption of an emergency rule to close the river and/or the Varney FAS. FWP would prefer to have the ability to anticipate such needed actions to enhance public notice and safety. FWP recommends that the commission propose the rule and initiate public involvement. The rule would allow FWP to assess the contractor's request with input from MDT for a temporary short-term closure and determine whether such action is warranted and whether there are alternatives that would have less impact on recreation opportunities without jeopardizing public safety.*

Eileen Ryce, Fisheries Administrator, stated that this is proposal for the temporary closure for the Madison River and Varney Bridge Fishing Access. In 2019 the Department of Transportation will be replacing the Varney Bridge over the Madison River eight miles south of Ennis. MDT anticipates that there will be times when construction activities will create unsafe conditions for the public. They have requested that we temporarily close the river or entire fishing access site on a short-term basis. The contractor with confirmation from MDT, would be required to notify FWP of each occurrence of such a request. Closure will only be considered for public safety and if there are no other reasonable alternatives.

During construction, MDT will require the contractor to provide safe public float passage when the river is open. FWP recommends that the commission propose the rule and initiate public involvement. The rule would allow FWP to assess the contractor's request with input from MDT for a temporary short-term closure.

***Motion: Commissioner Colton moved, and Chairman Vermillion seconded that the commission propose an annual rule authorizing the department, in consultation with the local commissioner, to temporarily close a portion of the Madison River and/or the Varney FAS on a short-term basis as necessary to safely complete removal of the existing bridge and construction of a new Secondary 249 bridge during the time period of March 15, 2019 to Nov. 15, 2019.***

Commission Aldrich stated that dealing with the Clark Fork River in a similar way that due diligence in providing the mechanisms to ensure that we are not overdoing this.

Public Comment.

### **Region 2- Helena**

John Way, Ennis, stated that everyone knows that Varney Bridge needs to be replaced. When there was a public meeting in Ennis in early fall, we were told that there would be no float closures or closures of the fishing access site. To our surprise this is popping up now. He is not saying it is not justified, he is saying that what they were told in Ennis and what is being said to is two different things. He would like to know what is different at this point. Also, the hot button issue of the day is Madison River crowding. If you have read the Bozeman Chronicle you will see that is the hot button of the day.

If you close floating under Varney Bridge and the fishing access site, it takes about 17 miles of river out of a 37-mile stretch. He would like to know what the plan is for when the closures are going to happen and what the outreach is going to be to the local community, guides, and fly shops, etcetera. We would like to prepare for the closures when they happen. Thank you.

Ms. Ryce stated that there is no one from Region 3 to comment on that right now.

Chairman Vermillion stated that this is a proposed rule and it will go out for public comment. Is that correct?

Ms. Ryce stated that was correct. She guessed that was a meeting that was held by MDT. We will certainly follow up with that and address that comment when we come back with the final.

Mike Bias, Fishing Outfitters of Montana, stated that the Madison has 180,000 user days in a year. Our concern is what is the definition of short term and temporary closure. March to November is eight months. He thinks that the Varney Bridge Access site is the most used access site on the Madison River. We would like to know what the definition of short term is. We would also like to know how MDT is going to notify FWP and how is FWP going to notify outfitters and other people using the river. This will be a 17-mile closure. Thank you.

Mac Minard, Executive Director, Montana Outfitters and Guides, stated that he has similar concerns about all this. There were some successes on the Clark Fork. It came to his attention last year when there were Swan River closures that the closures were for the convenience of the contractor rather than the safety of the community. He urges the Commission to put that priority higher than the other. He agrees that it needs to be about safety and welfare and not about the convenience of the building project.

Ms. Ryce advised that there was more detail in the packet on the rule notice that was provided by Montana Department of Transportation. If blasting to remove the existing structures and develop the river closure plan in cooperation with the project manager, FWP contact, blasting consultant, U.S. Corps of Engineers obtain approval of assigning the river closure plan 14 calendar days before blasting and demolition operations. Also, close the Madison River in the vicinity of the existing structures to all access before daily blasting and demolition activities commence. Warn the public in advance of temporary river or Varney access site closures by means of radio or television announcements, and articles in local and state newspapers as well as the internet. Based on that, it will only be closed when there is actual blasting going on. We can confirm that before the final.

Dave Scully, Outfitter, Upper Madison, stated that he agrees with what was previously said regarding closing the 17-mile section of the river during certain days. He thinks the logistics of getting the message out in a timely manner to the outfitters, so they can adjust for this process is going to be difficult for them as multiple things can occur during the summer. He will not have internet access, television, or be receiving a paper. One of the items that frustrates him about the construction is that road work can actually be done in the late fall and part of the winter. He is not sure that this is being done in a logical manner. He thinks that things are set up for the ease of the contractor. The busy season for the Madison is April to mid-September. It is going to put a bind on the river with the amount of people traveling on it at that point in time and make the crowding issue even tougher. Thank you.

Director Williams stated that in light of the Transportation Summit last week with the Department of Transportation and working with Director Tooley. She and FWP will work hard with Director Tooley so there is an understanding of the impact of the situation as well as get communication out to the outfitters. She has duly noted this and this is something that the Department can work on.

Chairman Vermillion stated that it had always been his experience with these projects is that the concern is the information will not get out the outfitters in time and it can cause disruption to the flow of the river. In his experience FWP does a good enough job making sure that the contractors generally know that this is something that they need to be careful about. They try to get the job done with minimal impact to the recreating community. There is either a bridge or not. We need to figure out how to get through this as easily as possible. This is a proposed rule that will go out for public comment. Hopefully, FWP and the MDT can work together so that MDT understands the impact to the recreating and outfitting community.

Eileen Ryce, Fisheries Administrator, stated that a phone number was being considered so that people could call and get the latest updates on the bridge construction. We will look into that before construction begins.

*Motion passes 5-0.*

#### ***14. Varney Bridge Fishing Access Site Bridge Replacement Project***

*The Montana Department of Transportation intends to replace the Varney Bridge because "it's functionally obsolete, the low deck and freezing conditions in the winter create ice issues at the FAS, and its weight limit hinders emergency or larger vehicle passage." Spanning the Madison River approximately 8 miles south of Ennis, the Varney Bridge borders the FAS on its northwest corner. The new bridge is to be constructed wider, longer, and higher. The wider bridge will have two lanes and is designed to accommodate safe pedestrian travel. The larger new bridge footings necessitate MDT taking .05 acre of the FAS at the tip of the northwest corner of the site and convert it into bridge right-of-way. In addition, modern design standards require the new guardrails to extend past the existing FAS approach, which will block vehicle access into it. To mitigate the loss of the existing approach and the .05 acre needed for the new bridge abutments, MDT acquired approximately 0.385 acre of additional land to create a new approach into the site. The new approach will be wider and have improved site distances making the access safer. It is also anticipated that the higher bridge will diminish icing issues at the FAS.*

*MDT and the Federal Highway Administration completed the National Environmental Policy Act categorical exclusion for the Varney Bridge replacement. FWP did not complete a separate environmental assessment but is in concurrence with the MDT public review processes. Two public meetings were held, one on Feb. 22, 2017 and the other on Aug. 29, 2018. MDT stated in their report that no written comments were received but "the general feeling of the meeting was strongly supportive of the project and of potentially re-purposing the existing structure."*

*Federal law required MDT to consider all feasible and prudent alternatives. Through this process, MDT was required to demonstrate that there are "no feasible and prudent avoidance alternatives," and additionally, "must minimize harm to the property." Ultimately, benefits to the FAS far exceeded the loss of .05 acre by increasing the site distance at the approach to the FAS bringing it to modern standards and by replacing the .05 acre with more than seven times the acreage, providing a safer ingress and egress from the FAS. FWP recommends that the commission approve efforts by the department to convey approximately .05 acre to MDT for construction of a new bridge and, in exchange, accept approximately .385 acre that will provide a wider access road and improved site distances at the highway approach.*

*Eileen Ryce, Fisheries Administrator, stated that the new bridge will be higher, wider, and longer. The larger new bridge footings necessitate MDT taking .05 acre of the fishing access site. Modern design standards require the new guardrails to extend past the existing FAS approach, which will block vehicle access into it. To mitigate the loss of the existing approach and the .05 acre needed for the new bridge abutments, MDT acquired approximately 0.385 acres of additional land to create a new approach into the site. In the public comment process the MDT received strong support for the project.*

*FWP recommends that the commission approve efforts by the department to convey approximately .05 acre to MDT for construction of a new bridge and, in exchange, accept approximately .385 acre that will provide a wider access road and improved site distances at the highway approach.*

***Motion: Commissioner Brower moved, and Commissioner Aldrich seconded that the commission authorize the department to dispose of .05 acre of property at the Varney Bridge FAS to the Montana Department of Transportation in exchange for .385 acre to accommodate the new bridge construction.***

*No Commission comments.*

*No public comment.*

***Motion passes 5-0.***

## **15. Stevensville Bridge Fishing Access Site Easement Acquisition and Development Region 2**

*The site of the proposed Stevensville Bridge Fishing Access Site (FAS) has been a popular user-pioneered area on the Bitterroot River for decades, despite being privately owned and undeveloped. Prior to January 2018, the landowner closed off (what had been unofficial) access to the public. Access to the river was being sought by many, including local citizens, anglers, sportsman's groups, Ravalli County and the Town of Stevensville (Town), as well as FWP. The*

*new landowner is offering to donate approximately 6.25 acres of land to FWP at this site, which includes the area traditionally used by anglers and boaters. The donation requires that FWP develop and manage the site as a public FAS; therefore, development plans are included with this fee-title acquisition proposal. (The deed would include a reversionary clause that requires FWP to develop and manage the land as a public FAS; if FWP failed to do so, the land would revert to the private landowner. In accepting the donation, FWP would also agree to develop a Management Plan specific to the development and maintenance of the FAS and to meet regularly with the landowner regarding the plan.) Proposed development includes parking (including an agreement with the Town for space in its River Park that is adjacent to the FAS), a latrine, fencing the riparian area, and 4 camping spots. The current boat launch configuration would remain. If approved, construction could begin in the spring of 2019.*

*FWP met several times with the Town, including the mayor, citizens and the Parks Board, often in a public forum. FWP held a scoping meeting in Stevensville to get comment on draft design ideas prior to the release of the draft EA. A 30-day comment period was completed for the draft EA. FWP received public comment from 24 individuals and organizations; none were opposed to the proposed acquisition and development. Twenty commenters supported the preferred Alternative B as proposed; 2 wanted a different development plan (one chose Alternative C, the other had a significantly different design), and 2 supporting the proposal did not want camping.*

*The analysis would be A) Do nothing: This would result in the likely loss of public fishing access that is very important locally. B) Implement the preferred fee-title land acquisition and development alternative that incorporates public sentiment and cooperation with the Town to partially utilize its River Park to provide recreational opportunity. C) Implement a fee-title land acquisition and develop the site—but do not work with the Town, in the event it does not want to provide parking at its River Park, which allows further protection of the riparian area. The Town is able and willing to cooperate, so Alternative C was not pursued. Implementing Alternative B whereby FWP accepts the fee-title land donation and develops and manages the property as an FAS as proposed. Much effort has gone into finding a solution that incorporates landowner, public and Town input, and public comment in support reflects this work.*

**Eileen Ryce, Fisheries Administrator, stated that this is for final approval for Stevensville Bridge Fishing Access site easement acquisition and development. The Stevensville Bridge Fishing Access site has been a popular user pioneer site for decades. The new landowner is offering to donate 6.25 acres of land to Fish Wildlife and Parks to develop and manage the site as a public fishing access site. The agreement with the landowner includes the reversionary clause. We have agreed to develop a management plan for the development and maintenance of this site. This would include regular meetings with the landowner. Proposed development includes parking, a latrine, fencing, and four campsites. Construction would begin spring of 2019.**

**FWP met several times with the Town, including the mayor, citizens, the landowner, and the Parks Board at a public scoping meeting. None were opposed to the proposed acquisition and development. We recommend that the Commission accept the fee title land donation, so we may develop and manage as a fishing access site.**

***Motion: Vice Chairman Stuker moved and Commissioner Aldrich seconded that the FW Commission approve the land acquisition and development per Alternative B in the EA, accepting fee-title donation of the land and developing the Stevensville Bridge FAS.***

### **Region 3 -Helena**

**Dale Burke, Stevensville, Ravalli County Fish and Wildlife Association, stated that they been involved in this issue for 25 years trying to get this access site. If any of you know the history of this, a few years ago, we ran into dire problems with the previous landowner. The new landowner opened an opportunity we didn't have before. Through his involvement with the Fort Owen Group in Stevensville we happened to get advanced notice of the landowner change. That evening he made a phone call to Randy Arnold who is the Region 2 supervisor. We recommend that you approve this as it is developed and has come along much better than we had hoped. This property would come to us as a gift.**

**The process and plan that you have before you, did not happen behind closed doors. It happened in public view. I wish to comment that the orchestration of the dialogue with the new landowner and the working out of this agreement through the public process by Mr. Arnold and his staff was impeccable. They need to be complimented on their work**

because a dire and agonizing situation was converted into a great public win. This is a win for us, the landowner and in the proposal, it says there will be a continuation of maintenance of dialogue with the landowner. This is very important to the Stevensville community not only was the fishing access site but, you will also be seeing in time involvement with Parks regarding the Fort Owen State Park. They had the same problem until we had the same dialogue the new landowner and the manager who grew up in Stevensville. He understood the gravity of the situation involving the access site, incredible cultural value, and the significance of Fort Owen.

Ravalli County Fish and Wildlife Association from the beginning with the Department worked with the town of Stevensville, surrounding communities, the local fishing community as well as the outfitters and guides to get this thing done. He is hopeful that the Commission will approve as it was proposed. He encourages the Department to keep close dialogue with the landowner as she is a good person to work with. In Nevada where she is from, people are closed to this sort of thing. A press conference was staged to announce change of ownership of that ranch. She agreed to it and attended. She got to meet and get a feel for the community. She got to hear about the importance of the site to the community such as families and outfitters. Thank you.

Marc Cooke, Stevensville, stated that he agreed with Mr. Burke. He commends the Department for moving forward with this. Randy Arnold did a great job making this a go to place. The amount of traffic that goes to this place is incredible. Thank you to Randy and his team for making it work.

Nick Gevoc, Montana Wildlife Federation, stated that this is a great compromise and keeps a large stretch of the river open to the public. This would have been a significant loss as you have heard. This is a win for anglers, floaters and outfitters. We really want to thank the landowner, the Ravalli County Fish and Wildlife Association as well as the Department. Thank you.

Commissioner Aldrich stated that this has been a monster project as far as he is concerned. This is a great one and it has been mentioned by a many that there are a lot of people that need a pat on that back for this one.

Vice Chairman Stuker wanted to thank everyone involved, especially the landowner for coming forward to work with the Department. Without that, none of this would have happened. So, thank you.

***Motion passes 5-0.***

#### ***16. Big Creek Instream Flow Water Rights Lease Renewal Region 3***

*On Feb. 15, 2018, the commission directed FWP staff to negotiate water-right lease renewal agreements for currently leased water rights from Big Creek. The lease agreement with Mountain Sky Guest Ranch expires prior to the 2019 irrigation season. Staff negotiated an agreement with Mountain Sky to renew an existing lease for 7.2 cubic feet per second. The cost of the 7.2 cfs lease renewal is \$15,000 per year, with Mountain Sky donating \$12,300 of the \$27,300 total lease value.*

*Recently, Mountain Sky applied to DNRC to change their water rights to accommodate changes in their irrigation. As part of this proposed irrigation change, they will be required to leave water instream that is presently leased to FWP to mitigate a reduction in irrigation return flow as they move from flood irrigation to sprinkler irrigation. This change is not expected to be approved before the 2019 irrigation season, potentially leaving water in Big Creek unprotected from diversion by junior water rights. This short-term lease renewal would protect instream flow until such time the irrigation change application and associated streamflow mitigation is approved. The lease renewal protects 7.2 cfs of the first-priority right on Big Creek. The purpose of the leases is to maintain flow in the lower 1¼ mile of Big Creek. Like other upper Yellowstone River tributaries, the focus of this water lease is to protect flow in Big Creek to provide for the successful spawning, incubation, emergence, and outmigration to the Yellowstone River of Yellowstone cutthroat trout.*

*As part of the original change to instream flow in 1999, DNRC provided notice to potentially affected parties of the opportunity to object to the change to instream flow. Other water users were also given the opportunity to provide new evidence of adverse effects during the first renewal of the lease in 2009. As part of the current lease renewal*

*process, DNRC would notify other water users and allow them to submit new evidence that the in-stream-flow lease has adversely affected their water rights.*

*The No Action alternative would be for FWP to not renew the current lease potentially resulting in significantly lower Yellowstone cutthroat fry production from Big Creek until Mountain Sky's pending water right change is approved. Another alternative would be for the water right owners to temporarily change the water right to instream flow without the involvement of FWP. However, approval by DNRC would take even more time than the pending change application and would serve no useful purpose. FWP recommends that the commission approve the Water Rights Lease Renewal Agreement to continue the protection of instream flow in Big Creek benefiting Yellowstone cutthroat trout.*

Eileen Ryce, Fisheries Administrator, stated that at the February meeting the Commission directed staff to negotiate water rights leasing for currently leased water rights from Big Creek. The lease agreement with Mountain Sky Guest Ranch expires at the 2019 irrigation season. An agreement has been negotiated to renew the lease of 7.2 cfs for \$15,000 per year. Mountain Sky would donate \$12,300 of the total \$27,300 total of the lease value. DNRC will notify their water users and allow them to submit evidence and effects of the instream flow lease. FWP recommends that the commission approve the Water Rights Lease Renewal Agreement to continue the protection of instream flow in Big Creek benefiting Yellowstone cutthroat trout.

***Motion: Commissioner Brower moved and Vice Chairman Stuker seconded to approve the Water Rights Lease Renewal Agreement with Mountain Sky Guest Ranch.***

No public comment.

No Commission comments.

Chairman Vermillion stated that this lease, has done a great deal to improve the fishing in that stretch of the Yellowstone River. Twenty years ago, Big Creek didn't make it to the Yellowstone except in May. It has really improved the cutthroat fishing there. It is a great success. Thank you to Mountain Sky for donating almost half of the value of the lease.

Vice Chairman Stuker added that these types of lease agreements are going to be very necessary for the Department and the fisheries especially if we have a slight climate changes that can affect the flows. Any of these agreements that we can get in working with landowners would be great for the Department moving forward.

Director Williams stated that she wanted to echo the thank you to Mountain Sky for their donation.

***Motion passes 5-0.***

### ***17. Fishing Access Site Biennial Rule***

*FWP is recommending the commission adopt a Fishing Access Site (FAS) Biennial Rule for 2019-2020. The rule pertains to:*

- Fees (camping, group-use permits, facility rentals, special recreation permits)*
- Stipulations on camping at fishing access sites*
- Group-use permit requirements (groups of more than 30 people)*
- Special recreation permit requirements (permit system in place on the Blackfoot and Madison rivers for commercial use, competitive events, organized group activities)*

*The new rule would replace the current FAS Biennial Rule, which was adopted by the commission in December 2016. The proposed rule contains no changes to the fees, stipulations or regulations governing the activities listed above.*

*The commission approved the proposed rule for a public comment, which was taken from October 25 to November 26. Two comments have been received as of November 21: one related to formatting of the rule and the second*

*addressed the camping fees. It was noted that the fees for seniors and the disabled (required to be discounted by 50% per statute) were slightly lower than that charged at state parks, producing inconsistency within the agency. The commission could 1) adopt the rule as presented, 2) make changes based on public comment and adopt the rule, or 3) seek additional public comment prior to adoption. FWP recommends the commission adopt the FAS Biennial Rule as presented. The commission increased the camping fees in 2016, and the department does not desire to raise or adjust them again so soon. The near lack of public comment on the issue suggests that the current fee structure is sufficient.*

Eileen Ryce, Fisheries Administrator, stated that this rule pertains to fees, stipulations on camping, group use permit requirements, and special recreation permit requirements. In October, you approved the proposed rule for public comment. Two comments were received. They were both internal comments. One comment related to formatting the fee and the other related to the discounted fee for seniors as well as disabled being slightly lower to that of parks.

We propose the Commission adopt the rule as presented. The Commission raised camping fees in 2016 with the lack of public comment on the fee structure. This suggests that the public has no significant concerns.

***Motion: Commissioner Aldrich moved, and Commissioner Brower seconded that the commission adopt the Fishing Access Site Biennial Rule for 2019-2020 as presented.***

No public Comment.

No Commission Comment.

***Motion passes 5-0.***

### ***18. Madison River Negotiated Rulemaking Committee Appointments Region 3***

*At the June 14, 2018, meeting, commissioners voted to direct the department to use the Negotiated Rulemaking process (MCA 2-5-101 to 110) to revise the Madison River Recreation Rule as presented to the commission on April 19, 2018. As part of the process, notice was published in the Montana Administrative Register on Sept. 11, indicating the intention to develop these administrative rules using a Negotiated Rulemaking Committee. This committee must consist of people that represent the interests that stand to be impacted by any rules that are developed.*

*FWP solicited comments on this process as well as applications for the committee from Sept. 21 to Oct. 22. Forty-nine applications were received and have been reviewed by FWP staff and commissioners. Two comments were received, as well, one recommending that the rules enacted on the Big Hole/Beaverhead be used on the Madison River as well. The second commenter thought that the department should involve member from the previous Citizen's Advisory Committee from several years ago, and felt that the fishing-outfitting community needed to be represented on any committee. The commission may: 1) appoint committee members from the applicant pool of 49; or 2) seek more applications before deciding on committee members.*

*The department feels that the applicants for the committee are inclusive of all interests potentially impacted by the recreation rules on the Madison River. The Department recommends the Commission chose a committee represented by a Commissioner, Department representative and 7 or 9 other members which represent the following interests; non-commercial resident anglers, large outfitters, small outfitters, non-angling recreationists, and non-angling business.*

Eileen Ryce, Fisheries Administrator, stated that At the June 14, 2018, meeting, commissioners voted to direct the department to use the Negotiated Rulemaking process (MCA 2-5-101 to 110) to revise the Madison River Recreation Rule as presented to the commission on April 19, 2018. As part of the process, notice was published in the Montana Administrative Register on Sept. 11, indicating the intention to develop these administrative rules using a Negotiated Rulemaking Committee. This committee must consist of people that represent the interests that stand to be impacted by any rules that are developed. Comments and applications were received between September 31 and October 22. Forty-nine applications were received and reviewed by staff. The recommendation that we received was to keep the committee membership at ten or less. For the significantly affected interest to be represented on the committee. It is

the Departments recommendation that in addition to a commissioner and a department representative, that a commercial angler, a large outfitter, small outfitter, a non-angling recreationist, and a nonangling business owner be part of the committee.

At the request of the Commission, we provided a summary of each application and indicated recommended individuals and alternates for each interest. With input from Mike Mitchell the convener, it is the Department's recommendation that the committee chosen to be eight members from the applicant pool that represent the identified interests. One commissioner and Don Skaar to represent the Department.

Chairman Vermillion stated before a motion is made, that it's important to know that all the Commissioners went over all the applications. As Eileen mentioned, there were 49 applications. There were a lot of talented people to consider for the committee that were willing to donate their time and energy to try to find a solution that will help manage this river going forward. He advised that he will no longer be on the commission when the rule is made but, he will vote on this. Vice Chairman Stuker will make the motion. One thing that he and Commissioner Aldrich did visit about was that it was felt that the Commissions should not be a voting member of the group. The Commissioners should just be there as an advisory and serve as a liaison for the group making the collaborative decision and the Commission as well as the Department. Don Skaar would certainly be a voting member. We will make the motion. This is going to be a complicated conversation so, we will see how it all goes. He looks forward to reading and watching it in the newspapers.

Vice Chairman Stuker wanted to thank all the applicants. He did go over all the applications and there are many talented individuals as Chairman Vermillion referred to. Thank you all for applying and showing interest in this.

***Motion: Vice Chairman Stuker moved and Commissioner Brower seconded to approve the list of committee members for the Madison River Negotiated Rulemaking Committee. Those names are:***

- ***Michael Bias, Twin Bridges, fishing outfitter and executive director of Fishing Outfitters of Montana***
- ***Julie Eaton, Bozeman, fishing outfitter***
- ***Scott Vollmer, Gallatin Gateway, fishing outfitter***
- ***Melissa Glaser, Ennis, Madison River scenic tour operator***
- ***Jim Slatterly, West Yellowstone, Campfire Lodge owner***
- ***Mark Odegard, Ennis, Madison River wade angler***
- ***Charlotte Cleveland, Bozeman, Madison River float angler***
- ***Lauren Wittorp, Ennis, executive director of Madison River Foundation***
- ***Don Skaar, Helena, FWP, Fisheries Division***
- ***Tim Aldrich, Missoula, Fish and Wildlife Commission***

Chairman Vermillion asked Ms. Dockter if public comment was needed on the committee choices.

Rebecca Dockter, Chief Legal Counsel, advised that the agency in the Negotiated Rulemaking such as the Commission in this case. The Commission first has to make a determination. She heard through Vice Chairman Stuker and Chairman Vermillion's comments that this is likely the case that determine that the applicants received could adequately represent the persons significantly affected by a rule in this case. She would ask that perhaps that the Commission make a motion first that there has been a determination or not that the applicants and the applications received could represent the persons that could be affected by the rule. That would be the first order of business she believes. You could then take and make the motion. You have already made the motion Vice Chairman Stuker and you may want to amend the motion to include that. You would have to take comment on it including the names.

Vice Chairman Stuker stated that based on legal advice that he would like to amend the motion to read:

*Amended Motion: Vice Chairman Stuker moved and Commissioner Brower seconded to approve the list of committee members for the Madison River Negotiated Rulemaking Committee. The names that are being put forward does in fact represent the interests that we identify for this process.*

Chairman Vermillion stated that he would like Ms. Ryce to explain to the public what the next steps are, when that meetings are, and how the public can get involved. How those selected can stay involved. Can you give a general outline please?

Ms. Ryce explained that she will try and legal can jump in if necessary. Our hope is to convene the Negotiated Rulemaking Committee in January. The first order of business will be to vote on a facilitator for the group. The Department will make a recommendation to the committee for that. The committee will then go through a structured decision-making process with the Committee to come up with a proposed rule to bring back to the Commission. At that point we would hope to send it out for public comment. So, in terms when the rest of the public would become involved would happen after the draft rule presented and released for public comment.

Chairman Vermillion stated that as he understands it the approach to structured rule making this collaborative requires a unanimous consent of the members of the committee before it can move forward. Everyone would have detail but could not mandate a particular direction without support of the rest of the group.

Ms. Ryce stated that was correct.

Director Williams stated the structured decision making requires the proposed rule isn't cooked ahead of time. Could you outline the depth that the committee would have to go through in structured rulemaking to come up with a rule.

Ms. Ryce stated that she would have Chief of Legal address this question.

Ms. Dockter stated the public would be open to attend all the meetings and no requirement for them to be involved. She wanted it on the record that all those meetings are open. The structured decision making would likely be run by the convener or facilitator. In that circumstance, they would narrow down or distill down the discussion or interest and come to some proposal that would have to be accepted by each of the members of the committee. Consensus as she understands it to mean through the rules and the usual facilitative process that each party would have to live with that (the proposal). Not to say that they would have to completely agree with it but be able to live with it. As Chairman Vermillion mentioned, they would not have a veto, but every member would have to be able to live with it. She doesn't know if that answers the question. It would be left up to the facilitator. Each member of the committee would have the same amount of input as any other. On this subject, she would just mention and she doesn't know if it was part of the motion but, it was mentioned by Chairman Vermillion that the commissioner on the committee would not be a voting member. The rules provide otherwise. It says the person representing the agency such as a commission member shall participate in the deliberations of the committee with the same rights and responsibilities as the other members of the committee. They are fully authorized to represent the agency in the discussions and the negotiations of the committee.

Chairman Vermillion stated that the Commission understood the language of agency to only mean an employee such as Don Skaar.

Ms. Dockter explained that it also means Commission. The agency is not the Department. The Department is part of the committee only because they would be significantly affected by any rule. So, we are (and we meaning a department representative) is in the same position as everyone on the committee. This rule itself provides that the commissioner would have to have the same participation, rights and responsibilities as the other members of the committee.

Chairman Vermillion asked Commissioner Aldrich if he was comfortable with that.

Commissioner Aldrich stated that he should never argue with counsel but, maybe he will. One of the definitions in the statute also talks about a definition of a person and it is an individual. When it says, the person representing the

agency will participate and so forth as you stated is an individual. It is the way that I would read that. There is a series of definitions at the start there and he thinks that they all have to work together.

Chairman Vermillion stated that he had one follow up question regarding Commissioner Aldrich as a voting member. Does that mean that Don Skaar is not? Can he also be, or does he have to be?

Ms. Dockter stated that all members would have the same rights and responsibilities as each other. It's good to have this discussion. If you recall Commissioner Aldrich, during our department discussion. The facilitator Mike Mitchell, the potential facilitator on the call at that time, she did raise the issue to whether the Commissioner would have the same responsibilities at that time. We discussed it and brought up this rule. The facilitator said that it poses a difficulty for facilitation when one member is different from the other when they don't have the same rights and responsibilities. It would be her recommendation to treat each of the committee members with the same rights and responsibilities. This would be pursuant to this administrative rule. Also, just the way facilitation generally works. She understands what Commissioner Aldrich is saying and would have to disagree with the interpretation.

Commissioner Aldrich stated that was the noble thing to do. The process goes on and doesn't end. The rule making process doesn't end with the output from this committee. This committee's output as stated in the statute goes to the Department to possibly make changes and then goes to the Commission. The Department may want to define its way out. I don't think they can. He thinks that they are in the process from beginning to end.

Vice Chairman Stuker stated that he had questions for Legal. He hates to bring this up but, he will. This goes back to what he was told on the school board a long time ago. That was regarding if an individual of the voting group (such as this), is too involved in a decision. There are examples of court cases that were associated with school board decisions. That particular individual could not vote then on the final decision. He wants to make sure that Commissioner Aldrich is eligible to vote. With that in mind you are still saying that he should be one of the members on the committee.

Ms. Dockter stated that she is not aware of the case that Vice Chairman Stuker was referring to. She reserves the right to override her own opinion on this. She would say that the statute is more specific to the Negotiated Rule Making. It actually contemplates that the agency could be (if you read the same definitions) where you cited to the person, an agency means a bureau, department, authority or officer of an executive branch. So, when it refers to a person representing an agency. It means an individual person that is going to be on the committee with the same rights and responsibilities. She would suggest that the way the statutes are actually written, contemplates this very circumstance where someone on a board can act on the committee and serve as a final decision maker when the committee as required by the negotiated rulemaking act, comes up with a decision on a proposal and presents it to the same board. The member then becomes a commissioner rather than a committee member. The negotiated Rule Making process allows Commissioner Aldrich to become an active committee member and then a voting member of the Commission.

Vice Chairman Stuker stated that he interpreted the statute the same as she did. He asked the about the second part as he had seen several examples of that happening when he served on the school board. He would also ask that it be open to the public. We have had some problem communicating whether we were going to have public comment or not. Will each session have a specific spot on the agenda for public comment and can the public come in and say something? In other instances, they have. He just wanted to make sure that this is the case here.

Ms. Dockter stated that is a good clarification to make. The law requires that each governmental meeting that convenes is open to the public. As long as there are no decisions being made that are a substantial interest to the public, then there is no requirement for input at the meetings. She would argue that these meetings are not significant decisions that are made on behalf of the agency, department or commission. However, the facilitative meetings usually have a time frame where there is a dedicated portion of it where the public can comment on it. That is generally up to the facilitator. It is not required by law. She would suggest that it is a good practice.

Vice Chairman Stuker stated that he would hope that will happen. Another thing that he wanted to know about the Negotiated Rule Making was that it was understood by the public in case that it would happen. Once we form the committee, they can add to it by statute and take it to the Commission. Can they add to it by a majority vote or consensus?

Ms. Dockter stated that was correct. They can add to the rule and looking at Montana Code Annotated 2-5-107, that discusses by consensus expanding the membership. It must be by consensus.

Vice Chairman Stuker stated that to make sure that he understands correctly, we talked about a consensus. He understood that if they get a proposal and they don't quite reach a consensus. Say it's seven to one, that information would be presented back to the Commission. Is that correct?

Ms. Dockter stated that she did not recall anything in the statutes on that subject. She does know that the previous Negotiated Rule Making Committee have done a report which included all the matters that was discussed or rejected. So, you would likely see in that circumstance what was discussed that did not come to you as a proposal by consensus.

Chairman Vermillion stated Montana Code Annotated 2-5-108 subpart (5) specifically sets that out. If you don't reach consensus, then it needs to be transmitted to the agency for reports specifying where they agreed and disagreed. Just so he is clear, we have Commissioner Aldrich as a nonvoting member and when he looks at this as the person representing the agency. He wanted to know if this means that Don Skaar cannot represent the agency as an employee of the Department cannot be on the committee.

Ms. Dockter Montana Code Annotated 2-5-108 subpart (2), says the person representing the agency on Negotiated Rule Making would be considered the commissioner. That would be Commissioner Aldrich. Mr. Skaar would be considered, when looking at the constituent membership of the committee, would just another be a member who representing a significant interest. That would be someone who is significantly affected by the rule. Each of the persons chosen is someone who represents an interest that could be significantly affected by the rule including the Department.

Vice Chairman Stuker stated that Mr. Skaar would be representing the Department.

Commissioner Aldrich added that Mr. Skaar would be a party of interest.

Ms. Dockter stated that was correct.

Commissioner Aldrich stated that Montana Code Annotated 2-5-108 states the person representing an agency in Negotiated Rule Making shall participate in deliberation of the committee with the same rights and responsibilities of the other members of the committee and is authorized to fully represent the agency in discussions and negotiations. If that's the way it is to be then, that is the way it is to be. We will move forward that way. Clearly, we now understand that he and Mr. Skaar will not be one and the same to represent the agency. He will represent the Agency and Mr. Skaar will represent the Department.

Commissioner Brower wanted to know that if a person was added would there be another application process? Or would it be consensus to add the individual?

Ms. Dockter advised that it would be consensus to add the other individual. It does appear that there is any requirement for another application.

Chairman Vermillion stated that the committee is empowered to make that decision.

Vice Chairman Stuker stated we have the motion for the eight individuals. Does Don Skaar need to be included in the application process? Can they just appoint or does the Commission the individual also?

Ms. Dockter suggested to include the agency and the Department in your motion.

Vice Chairman Stuker asked if Commissioner Aldrich be in the original motions and voting as himself or a motion separately so that he is not voting on himself.

Ms. Dockter stated that she had visited with Commissioner Aldrich about this. She thinks that they discussed and agreed that there should be two motions. He needs to be considered separately to recuse himself from it.

Chairman Vermillion asked if Mr. Skaar had been included in the motion.

Vice Chairman Stuker stated that he had not. He will amend the motion. He stated that he will amend the amended motion.

***Amended Motion: Vice Chairman Stuker moved and Chairman Vermillion seconded to approve the list of committee members for the Madison River Negotiated Rulemaking Committee. The names that are being put forward does in fact represent the interests that we identify for this process. This is to include Don Skaar as the interested party for Fish, Wildlife and Parks.***

Chairman Vermillion stated that they would open up for public comment about the selected committee members and the Department selection. We then will have a subsequent motion for the Agency selection.

Public comment.

Todd France, Outfitter, Ennis, stated that he did apply for the committee and is disappointed that he may not as much to do with saving the river that he grew up on. In his opinion it needs to be saved. He hopes that the people that have been chosen to keep in mind the interested parties and the interest of the groups they represent. Without the interest of the Madison River no one will have an interest. He hopes that each and every one of you thought that through before you decided on who would be on the committee. He thinks there are some fine choices and others are not. He prays that they all have the same interest to save the Madison River. Thank you.

No further public comment.

Chairman Vermillion states that they would vote on the first motion. Those in favor of the first list including Don Skaar, a total of nine people serving on the Negotiated Rule Making committee signify by saying "I".

***Motion passes 5-0.***

***Second Motion: Vice Chairman Stuker motioned and Commissioner Colton seconded to nominate Tim Aldrich to serve on the Madison River Negotiated Rule Making Committee as a representative of the agency which is Montana Fish, Wildlife Commission.***

Public comment for the nomination of Tim Aldrich for the committee.

No public comment.

***Motion passes 5-0.***

Chairman Vermillion stated that this was not an easy decision. Our decision was easier to make than the committee will now have to make. Remember as Mr. France said, about the resource but it is very important to have in mind the economic social cultural impact the decisions will make. This is not just the Madison we are talking about. This will potentially affect all the rivers in Montana. Whatever is decided and is brought to the Commission next year that we will put into effect in 2020. This will have dramatic impact on the Yellowstone and the Gallatin. This is the beginning of a great process. In a lot of ways, the Beaverhead and the Big Hole have worked out well. There may be a few things in that system that a few people do not like. You have an opportunity to look at all of that. We tried to make sure that we had a broad-based talented group of people as possible to sit on this. We think that they will do a good job. The decisions are never easy, but they need to be made. Thanks to everyone that applied and came up here.

#### ***19. Wildlife Management Area and Fish Conservation Area Biennial Public Use Rules***

***Public use rules for Wildlife Management Areas, Wildlife Habitat Protection Areas, and Fish Conservation Areas are adopted by the commission on a biennial schedule. FWP is recommending retaining existing rules with one addition. A copy of the proposed rules with red underlined edits is included in the commission packet. The new rule pertains to***

*camping on the Beartooth WMA, restricting camping to designated areas, and prohibiting camping on the Whitetail Prairie addition of the WMA. This new rule is intended to help manage camping activities, reduce user conflicts for some portions of the WMA, and minimize resource impacts/habitat disturbances.*

*Upon tentative approval, the public use rules would be made available for public review and comment. The commission would take final action on the rules in February 2019.*

*The original set of rules adopted in February 2017 as well as the proposed addition may be modified or added to in response to comments received during the review period.*

*FWP recommends the commission provide tentative approval of the proposed rules, allowing for further public review. The function of these rules, as described therein, is to “protect fish and wildlife habitat, wildlife presence on WMAs, and public use of the WMAs, including but not limited to fishing, trapping and hunting opportunities. All other uses are secondary and must be in accord with the primary goals and objectives of the wildlife management areas.”*

Ken McDonald, Wildlife Division Administrator, stated that they are addressing the Wildlife Habitat Protection Areas, and Fish Conservation Areas use rules. The rules address topics such as camping, winter closures, vehicle use, camp fires, food storage, and so on. What is before you today are a biennial rule that we bring to you every two years. The rule today is the same as last year with one exception to restrict camping to designated camping areas on Beartooth WMA and prohibit camping on the Whitetail Prairie portion. All the other rules remain unchanged. This is a proposed rule. If approved today, it will go out for public comment. The we will seek final approval.

***Motion: Commissioner Brower moved and Vice Chairman Stuker seconded the commission provide tentative approval of the public use rules as proposed.***

Public comment.

No public comment.

Commission comment.

No Commission comments.

***Motion passes 5-0.***

## ***20. Mt. Haggin Wildlife Management Area Addition***

*FWP proposes to purchase in fee-title a 161-acre (approx.) parcel adjacent to Mt. Haggin Wildlife Management Area, which would be managed as part of the WMA. The property offers many strategic qualities:*

- It borders the WMA on three sides.*
- It includes two mesic meadows and the headwaters of Oregon Creek.*
- Located just below the Continental Divide, it's part of the migration pathway for elk and mule deer and provides elk calving habitat and summer range.*
- It is adjacent to the Sugarloaf Lodge property (~150 ac.), which is currently for sale, making this property more at risk for development, especially with the Mt. Haggin WMA cross-country ski trails directly across the road.*
- It would increase public access for hunting, angling, trapping, wildlife watching, and other recreational opportunities.*

*The Rocky Mountain Elk Foundation has had preliminary conversations with FWP on this proposal and may assist with this project if endorsed by the commission.*

*Upon endorsement by the commission, an appraisal valuation and other due diligence investigations would be conducted, along with an environmental analysis and a public review period. The available alternatives are to purchase or forgo purchase of the property. The property is strategically located adjacent to Mt. Haggin WMA.*

*Depending on future uses of the property, such as development, there is the potential for conflicts with wildlife habitats, hunting, and other forms of public recreation on the WMA. FWP recommends the commission endorse this proposal. An endorsement would allow the department to conduct additional work for assessing the viability of this proposal.*

Ken McDonald, Wildlife Division Administrator, stated that this is a proposed addition to the Mt. Haggin WMA. This is an endorsement. If approved today this would trigger due diligence and public process. This is a fee title acquisition for approximately 161-acre parcel that is adjacent to Mt. Haggin. The map is in your packets. The area that is to the north central part of the triangular piece right where the edges of the wild life area come together. This proposed addition would border three different sides. It is a key area for migration for elk and mule deer. It contains two mesic meadows and the headwaters of Oregon creek. It is an important piece to help maintain the integrity of the wildlife management area.

The Rocky Mountain Elk Foundation has been working with us including bridging it until we could get through the due diligence process. Mike Mueller from the Elk Foundation has been working on this with the landowners already. The Elk Foundation wanted us to know that they pass on support for this project. With your endorsement, we would proceed.

***Motion: Commissioner Colton moved, and Commissioner Brower seconded the commission endorse this addition to Mt. Haggin WMA, allowing FWP to proceed further with negotiations, evaluation, and public review.***

Chairman Vermillion stated that it sounds like we are getting assistance from the Rocky Mountain Elk Foundation. They were in the paper a lot last week regarding the potential acquisition in Meagher County. You can see the helping hand that they are giving the Department and sportsmen throughout the state. Thank you to them in advance.

Public comment.

### **Region 3-Helena**

Nick Gevoc, Montana Wildlife Federation, stated that as we love to add to our wildlife habitats. As we have learned recently that some of the small additions can be very significant. We strongly support this. Thank you.

Sam McGregovich, Skyline Sportsman's Club, stated that they also support this.

### **Region 3-Bozeman**

John Borgreen, Montana Sportsman Alliance, supports this action as well.

Commission comment.

No Commission comments.

***Motion passes 5-0.***

### ***21. Thompson-Fisher Conservation Easement Amendment to resolve encroachment issue***

*Montana Fish, Wildlife & Parks proposes to resolve a third-party encroachment issue on the Thompson Fisher Conservation Easement (2003), which covers ~142,000 acres of land owned by Weyerhaeuser located in Flathead, Lincoln, and Sanders counties. The encroachment issue involves seven different parcels of land that are owned by Montana's Department of Natural Resources. Each parcel is adjacent to the CE and lies along the Thompson River. The parcels provide for cabin leases with structures or other improvements that partially or in whole encroach onto the CE property. The encroachments in total equal 1.63 acres of land. All the improvements that encroach onto the CE were constructed before the inception of the CE.*

*To resolve this issue, FWP intends to amend the CE, removing the 1.63 acres of encroached land from the CE, and in exchange, replace and offset with 5 acres of land Weyerhaeuser has generously offered to include into the CE. The replacement parcel of land is adjacent to the existing CE and located nearby on the Little Thompson River (see map). The replacement parcel is similar in characteristic to the cabin lease parcels.*

*The net gain of 3.37 acres of land that would be added by the amendment would provide a conservation gain, protecting additional acres of prime riparian habitat along the Little Thompson River and disposing of developed parcels of land with little to no conservation value. The gain in acreage is also the basis for bringing this proposal to the commission for consideration, which is consistent with the FWP Conservation Easement Amendment Policy and Conservation Easement Enforcement Policy (both are included in the commission packet).*

*No money would be exchanged to complete the proposed amendment.*

*There has been no other public involvement to date. Forest Legacy dollars were used in the purchase of the CE and FWP has received approval from the United States Forest Service to proceed with this proposed amendment. Upon endorsement by the commission, this proposal would be made available for public review. Over the years, a variety of potential solutions have been discussed with DNRC and Plum Creek/Weyerhaeuser. All parties are now finally in agreement that this is the best alternative tailored to resolve this issue. FWP recommends the commission endorse this proposal. This amendment would resolve a long-standing encroachment issue on the Thompson Fisher Conservation Easement.*

Ken McDonald, Wildlife Division Administrator, stated that this is a new project that we have in front of you. This is an amendment to the current Thompson-Fisher Easement to address an encroachment issue. There are seven different cabin sites that encroach onto the land that we have the conservation easement on. The encroachment totals about 1.63 acres. All the encroachments are cabins that were built before the easement was completed.

The resolution being proposed is Weyerhaeuser has offered to include in the conservation easement five acres along the Little Thompson River. We would withdraw the 1.63 acres approach on the easement. The gain of 3.37 acres which is consistent with our easement amendment policy that we talked about earlier, that if there is a net conservation gain of acreage and the value of the acres results in a gain for the overall easement. Because it involves the disposition, the removal and addition of acreage into the easement your approval is necessary as well.

We ask that you approve the endorsement to move forward with this amendment and ask for final approval after we go through the public process.

***Motion: Commissioner Aldrich moved, and Commissioner Brower Seconded the Fish and Wildlife Commission endorse this proposed expansion of the Thompson Fisher Conservation Easement.***

Public Comment.

No Public Comment.  
Commission comment.

No Commission comments.

Chairman Vermillion wanted to thank Weyerhaeuser for their involvement in all this.

***Motion passes 5-0.***

## **22. 2019 Region 5 Mule Deer Season Changes in Hunting Districts 502, 510, 520, 575**

*FWP proposes to change the 2019 mule deer hunting regulations in HDs 502, 510, 520, and 575 to address CWD, which was found in these HDs in late 2017 and early 2018. FWP is proposing this change outside of the regular*

biennial cycle because of CWD. Long-term CWD management, as described in the Montana CWD Management Plan, is aimed at maintaining low densities of deer and low buck: doe ratios in hunting districts with CWD and adjacent hunting districts to keep disease prevalence low and prevent disease spread. We are proposing to manage for lower buck: doe ratios because bucks are two to three times more likely to be infected with CWD and more likely to spread it through the population.

Specific changes proposed are:

- HD 502 change the general mule deer season from buck-only to either-sex.
- HD 510 eliminate the unlimited 510-50 buck mule deer permit and establish an either-sex mule deer season.
- HD 520 change the general mule deer season from buck only to either-sex in that portion of HD 520 lying east of Highway 212.
- HD 575 increase 575-00 antlerless mule deer B license from 250 to 500 and increase the biennial range from 5-200 to 5-750. This proposal is outside the current biennial range and requires commission action.

Proposals may be adopted as proposed, with adjustment, with additions, with deletions, or no change from 2018 (status quo). No change would challenge the supporting justifications behind proposals. In addition to public comment on proposed deer season changes taken during the Dec. 10 commission meeting, public comment will run through 5 p.m., Jan. 18, 2019, and any final adoptions will take place at the Feb. 2019 commission meeting. Rationale for individual proposals is included in the commission information packets and may be further articulated at the Dec. 10 commission meeting.

John Vore, Game Management Bureau Chief, Wildlife Division, stated that the mule deer season change for hunting districts 502, 510, 520, and 575 for 2019. FWP proposes to change the regulations in these hunting districts to address CWD that was found in late 2017 and early 2018. We are proposing this change outside the biennial season cycles because of CWD.

Long term CWD management as described in the Montana CWD plan. It is aimed to maintain low density of deer and low buck -doe ratios in hunting districts with CWD as well as to keep disease management low and prevent spread. Bucks are more likely to be infected and spread CWD. The specifics of the proposal are for hunting districts as follows:

- 502, to change the general mule deer season from buck-only to either-sex.
- HD 510 eliminate the unlimited 510-50 buck mule deer permit and establish an either-sex mule deer season. This is currently one of the unlimited permit districts.
- HD 520 change the general mule deer season from buck only to either-sex in that portion of HD 520 lying east of Highway 212.
- HD 575 increase 575-00 antlerless mule deer B license from 250 to 500 and increase the biennial range from 5-200 to 5-750. This proposal is outside the current biennial range and requires commission action.

Mr. Vore asked if there were any questions.

**Motion:** Commissioner Brower moved and Vice Chairman Stuker seconded the commission adopt for public comment the 2019 deer hunting regulations for hunting districts 502, 510, 520, and 575 as presented by FWP, and that all other aspects of the deer season remain unchanged unless addressed in other proposals.

Public comment.

### **Region 3- Helena**

Nick Gevoc, Montana Wildlife Federation, stated it has become apparent that CWD is more wide spread than we had hoped for. It is a sad reality. He commends the Department for its monitoring of the disease. In some of the areas we are going to see fewer deer in the short coming of time. We thank the Department for a good plan and implementing this. These are good proposals. Thank you.

Jeff Herbert, Montana Sportsman's Alliance, greeted commission and stated that they support moving this proposal forward to public comment. He has had experience with the Department anticipating these kinds of actions. He feels that there is a lot at stake here. We would appreciate some definitive action. Thank you.

Commission comment.

Chairman Vermillion stated that they saw a few positive hits in northern Montana. Are these regulatory changes the public should expect to see in those districts next fall as well or not?

Mr. Vore stated they will be looking at changes in Regions 6 and 4 because of finding CWD. We will probably be looking at changes in B licenses and maybe changes in Region 4. Region 4 would be regarding the three-week season that is there now. We still have about 48 samples that are still out and haven't gotten the results back. We are waiting until we have all the results back and then convene a meeting of all FWP staff to go over options for next year.

At this time, we are not entertaining any idea of special hunts. Please keep in mind that northern Montana this past season was a surveillance effort to find CWD. The next step would be to find out the prevalence of the disease. We do have some idea of because of samples we have taken to date. We can likely accomplish that next year during general season to get enough samples to determine prevalence. This will depend on how the last 48 samples come back. We will also have to look at the total samples of the areas that we do have. This will all be determined in a couple of weeks. We will look at all the information that we have and determine what we will need to do.

Chairman Vermillion stated that this is directed toward the Commission that per the news feeds last fall, he got the sense that there was a lesser surveillance than the previous year in north central Montana during the mandatory late season hunt. It seems there were a lot of CWD positive deer found there. He is wondering that if in the 48 samples that was taken which is a substantial number, it would make sense to come to the Department and the Commission in January to work on those Districts as well. This would help get the regulations in place for fall. It appears that the infection rate could be higher than the southern part of the state.

Mr. Vore stated that it could be. Keep in mind that the special hunts last year in Region 5 and Region 4 were efforts to determine prevalence. It was not a surveillance effort. For an understanding of surveillance, it means to just look to see if it is there. We then try to determine the prevalence. It is a different way that we go about sampling it.

During surveillance, we use a weighted sampling method. When we determine the prevalence, we do an unbiased random sample. That is what we did late in the harvest. It depends on the size of the deer population that we are dealing with. Our biologists will start doing flights starting in December through January to try to get an idea of how many deer we are dealing with and then determine how many to sample. Since this is a slow-moving disease, it moves slow through the populations. It takes a while to manifest itself. As far as impacts to the population? We think we can what we need to do in a course of a couple of years. We can do that during general season of next year.

Chairman Vermillion stated that what he was hearing was that it would be premature to set new regulations for those districts in January or February of next year.

Mr. Vore stated that what was discussed to date within the Department is that this would best come during the regular biennial season setting time. We think we can accomplish this by changing seasons of we need to.

Chairman Vermillion asked about the result that was found that caused a significant escalation to Montana's elk herd. It was found in Grand Teton National Park which is outside all the feed grounds that we wrote a letter about last fall. He is wondering what the Department thinks about that and if there is any indication from Wyoming that they may change their approach on the new findings.

Mr. Vore stated that he has not heard anything from Wyoming. We have always known that CWD has been very close to us in Wyoming. This is why we looked last year in Region 5. This has spread further west than previously known. We know that it is very close to us in Wyoming. It is getting very close to Region 3. We have been doing surveillance as you know in the southern Paradise Valley area. We have not found CWD in Region 3 to date.

Chairman Vermillion stated that is safe to assume that due to unnatural concentrations of cow elk on feed ground that a quick spread of CWD could be directly correlated.

Mr. Vore stated to keep in mind that it was not an elk that was found in Grand Teton National Park. Any unnatural concentrations or natural concentrations of deer and elk are a concern. It is the most immediate was that CWD is transferred. The one that we worry about the most is from animal to animal. An infected carcass on the landscape can be a potential source. Animals coming into contact with each other is a potential threat of spread of the disease. This is a concern to us. In our plan, we identified that one of the actions we can take is to deal with those types of concentrations. For example, 300 deer in an alfalfa field. Any concentration of animals could cause a spread of the disease.

Commissioner Colton stated that he appreciated the comments. Some of us are headed to the WAFWA meeting soon and it will be interesting to see how many other states are dealing with this. He wondered if there will be discussions about this and if we can reach an agreement with Wyoming on CWD and the concentrations that we are seeing. He wanted to thank Region 5 for their efforts in putting this together so that we can take it outside the season setting. There was some license structure that needed adjusted due to what we are seeing. He thinks that this is good response to that as well as the data that was collected. The information that we got from the hunt last year was very helpful. Hopefully we can have a more candid discussion with our neighbors about our concerns over CWD. It seems that we have taken appropriate efforts that can be lost because animals do not know boundaries.

Commissioner Aldrich stated that being an old hunter, I thought the problems that we faced in the past were life changing with habitat, winter kill and some of the whitetail deer diseases. He feels that this is a huge wake up call. With the proposal, he sees the need for it. We need to bring the public along on this one as this is going to be a huge change in the way we do things and what we can expect. He thanks the Department for the aggressive approach and it is essential.

Chairman Vermillion stated that the net effect of this rules is that we are going to have fewer deer in a lot of the districts. It is the sportsmen and women who are going to pay the price for the disease. It is not a disease that we created. It is a disease that came in from outside the borders of Montana. This is partially because of management decisions that have happened elsewhere. It is important the Department stays strong in communicating that part of linkage and the lack of opportunity in certain parts of the state especially north central Montana.

Commissioner Colton stated there was a special buck only area that you had to commit that was you were going to hunt an antlered mule deer. There was a specific opportunity that was created by the sportsmen saying that this was a special area for mule deer and growth. Now we are having to move away from that because of the disease. Folks that enjoyed that opportunity for the exclusivity of that have lost it. We are going to see more of that if we cannot get an opportunity if we are unable to get a handle on it. Then we will have problems.

Vice Chairman Stuker stated that he would like to thank the Department for being proactive on this issue and the questions asked. Thank you.

Commissioner Colton stated that he saw a headline where a federal judge based on a petition regarding the feeding grounds and a suggestion of a preliminary injunction in one specific area.

Director Williams stated that she was not aware of that. The day Wyoming knew the deer tested positive in the Grand Tetons, the Director did call her to let her know when it happened. She hasn't followed that case but, they certainly will. She will get back to you this afternoon about it.

Mr. Vore stated that the Commission hit on a very important point about communication. We have known all along that communication is going to be the most challenging part of all this. Communication is addressed in the CWD management plan. We worked closely with CommEd on doing this. This is new on our landscape now but, moving forward five or ten years it may not be on the radar. That could make it harder to make changes that we need to do. It is an important point to keep communication open. We have plans next year to send letters to every license holder in the state regardless of license type. He just wanted to highlight this. Thank you.

Chairman Vermillion asked what is foreseen to be the long-term projection of this and what the best outcome could be in some of these management decisions.

Mr. Vore explained that we will not be able to eradicate the disease but, it is here and part of the landscape now. Our hope is that we can do management that will keep it from spreading and keep prevalence low. If you look at the larger area in Region 5 it's about two percent. The hot spot that we call the initial response area is close to eight percent. We need to do something about that. We want to keep it much lower. If we can keep the prevalence relatively low the opportunity for it to spread across the landscape would be low. We are lucky in Montana that so far that it has not spread in other parts of the state. Overall, we think prevalence will be low and other states are dealing with a prevalence that is 20 percent or higher. When the percentages start getting higher that is when you see the greatest effects on herds.

CWD is an insidious disease that is not like EHD that Commissioner Aldrich referred to such as blue tongue that left a lot of dead deer on the landscape. This is not the case with CWD. If we are successful in managing it, people won't be seeing a lot of dead deer. Although we may see fewer deer, it would indicate successful management. In discussions with our sister states, neighboring provinces, and those that had high percentages; they didn't know 30 years ago what we know now. Had they known what would they have done differently? It is unanimously agreed upon that they would have much more aggressive in its treatment. He feels that FWP is in a good place for several reasons such as the 1999-2000 initiative that outlawed any new livestock facilities.

Historically in Montana we have managed for opportunity rather than for trophy bucks. That had put us in a good place where there is fewer bucks on the landscape. There are states with trophy areas. They are managing for older and more bucks on the landscape. That is not what you want to do for CWD management. If we can keep it where it is, we could keep the prevalence low through management. If we can address it through other means such as the dealings with concentrations. We think we can be successful in keeping it where it is and managing it at a rate that won't spread it far.

Next year our surveillance effort will go down to Region 7. We fully expect to find it there. Should we find it, we won't know the prevalence.

Chairman Vermillion asked of the Department has had any thoughts about how all the surveillance is going to be afforded? This is going to cost and we have a limited budget. How is the Department going to fund all this? Is there any thought about getting state funding for all the surveillance that is going to take place? It is not just a wildlife problem. It is everyone's problem.

Mr. Vore stated that this is stretching our staff currently. Just for the surveillance we do hire temporary staff to man check stations. We are also doing more in Region 5 to bolster our sample size. We are also working in Region 4. Next year we will be working in Region 7 but will still need to have people in Regions 4 and 6. It will be stretching staff and resources. Processing the samples can be expensive as well. We do have part of our budget proposal and recognize we are going to need additional staff in the future. As you know, requesting additional staff from the Legislature is no easy task. We take this very seriously. We are grateful to the public as they are also taking this seriously. We would like to thank the Mule Deer Foundation, Rocky Mountain Elk Foundation, and MOGA, for the support that we have received.

Commissioner Brower asked if the Department still uses the same lab to process the samples. It seems like if they were to take more samples they could get bogged down as well.

Mr. Vore answered that they do still use the same lab. They are sent to Colorado State University. The Legislature in Colorado has given their department additional funds to process samples. It is actually cheaper to send them there than it would be if we had a lab here in Montana. They process samples from many different places. Right now, they do not seem bogged down but, if our sampling increased to say 10,000 then that could be a possibility.

Director Williams stated that she wanted to thank the congressional delegation efforts because CWD impacts so many other areas and looking at federal funding to help with these efforts.

Mr. Vore added that he has been involved from the beginning and has a lot invested in it. He thinks the staff and the citizens panel did an amazing job of putting together the plan. He feels that we have one of the best in the nation. It has been reputed by our sister states. We are not doing this in a vacuum but are working with other states. We work with WAFWA and our disease biologist Dr. Emily Almberg is very involved in this. She is part of our internal CWD

action team. We will be convening again soon to talk about the things that we have discussed here. We are trying to keep on top of this as it is a moving target. He feels that it is being addressed according to our best current knowledge.

Chairman Vermillion stated that one thing when this all started was an idea that made sense was presented to convene some kind of elk summit. We haven't done that in 12 years. When you think about everything we have discussed today. It might be time to that again. CWD is a huge issue and talking with the Director of Wyoming fish and Game about untreated implications of the disease. In 100 years, there may not be elk or deer. This disease when it gets going, will have an impact on how we will see our wildlife. CWD is a threat to our way of life and how we view wildlife in this state. He visited with the Rocky Mountain Elk Foundation and they were interested in helping with a summit. It is time to elevate this subject dramatically. It would be an opportunity for sportsmen, landowners, and the Department to work on this issue that we all care about.

Director Williams asked if Chairman Vermillion would volunteer after he retires.

Chairman Vermillion answered that yes, he would. He would be happy to.

*Motion passes 5-0.*

### **23. 2019 Elk Hunting Regulations in Hunting Districts with Performance Based Shoulder Seasons**

*FWP proposes three options for the 2019 hunting season for the Commission's consideration about performance-based shoulder seasons in the original 43 hunting districts. Those options are:*

- 1. Maintain the current season structure in all districts, including early and late performance-based shoulder seasons for the 2019 license year, to allow for a more comprehensive three-year evaluation of season performance in late summer or early fall 2019.*
- 2. Discontinue performance-based shoulder seasons in all districts until a full evaluation of their performance against the established criteria is completed.*
- 3. Change the season structure for the 2019 license year in the five hunting districts most egregiously over-objective and falling well short of the cow harvest criteria. The other remaining districts would remain as is.*

*Option 3 proposes to change season types and licenses in hunting districts 411, 511, 530, 540, and 580 (all of which have performance-based shoulder seasons that have failed to meet harvest criteria after two years and are unlikely to meet those criteria in a third year), and to make the 004-00 and 005-00 B licenses over-the-counter instead of limited draw. The purpose is to increase harvest, especially of antlerless elk, by focusing more antlerless harvest during the general firearms season by changing these HDs to antlerless-only harvest during the last three weeks of the general season, and by increasing availability of B licenses. In general, this proposal:*

- Maintains current performance-based shoulder seasons because of the substantial antlerless harvest that occurs. In the last two years, 32 percent of adult cow harvest totaling 590 cows in these five HDs was during shoulder seasons.*
- Maintains the current archery season.*
- Changes the general license opportunity during the general rifle season to the first two weeks being either-sex or spike/antlerless and the last three weeks being antlerless-only.*
- Converts the limited-draw regional 004-00 and 005-00 B licenses to over-the-counter to allow additional opportunity if/when hunters desire.*
- Retains special either-sex opportunity permits such as the 900-20, 411-20, 580-21, and 580-22 through the entire archery and general seasons.*

*The five HDs in Option 3 were identified among all HDs with performance-based shoulder seasons as the most egregiously over-objective and fell short by 400 or more of the needed adult cow harvest for 2016 and 2017 combined.*

*This proposal comes outside of the regular biennial cycle and is necessitated by FWP and commission interest in managing elk to population objective. These proposed changes are further explained in the justification in the commission packet for the December 10 meeting. In addition to public comment on proposed elk season changes taken during the Dec. 10 commission meeting, public comment will run through 5 p.m., Jan. 18, 2019, and any final*

*adoptions will take place at the February 2019 commission meeting. Proposals may be adopted as proposed, with additions or deletions, or with no change from 2018 (status quo).*

John Vore, Game Management Bureau Chief, Wildlife Division, stated he wanted to give some background from where this all came from. Managing elk populations to managing objectives is in statute. It is the law. Montana Code Annotated 87-1-323 states Viable elk, deer, and antelope populations based on habitat acreage -- reduction of populations as necessary. (1) Based on the habitat acreage that is determined pursuant to 87-1-322, the commission shall determine the appropriate elk, deer, and antelope numbers that can be viably sustained. The department shall consider the specific concerns of private landowners when determining sustainable numbers pursuant to this section.

(2) Once the sustainable population numbers are determined as provided in subsection (1), the department shall implement, through existing wildlife management programs, necessary actions with the objective that the population of elk, deer, and antelope remains at or below the sustainable population. The programs may include but are not limited to:

- (a) liberalized harvests;
- (b) game damage hunts;
- (c) landowner permits; or
- (d) animal relocation.

(3) The department shall:

(a) manage with the objective that populations of elk, deer, and antelope are at or below the sustainable population number by January 1, 2009; and

(b) evaluate the elk, deer, and antelope populations on an annual basis and provide that information to the public.

Viable sustained elk populations are those that are identified as population objectives in the 2005 Elk Management Plan. The objectives for the 44 elk management units in the state were arrived at a public process that included hunters and other stakeholders with the considerations of the specific concerns of private landowners. Many of the elk populations have been subsequently through a process requiring Commission approval as outlined in the plan. The plan needs updating. We are in the process of hiring staff and to take that task. The current objectives are the objectives we are managing for. Many people say that we need to raise that population objectives. That may be true but, by following an appropriate process.

With higher objectives, we will find ourselves in the same situation but, only worse. The harvest criteria in the performance-based shoulder season guidelines which we have failed to meet in some of the hunting districts. These are only minimums that would stop the population from growing. A harvest that meets that criteria does not reduce elk populations. Because we can't seem to get enough harvest in some hunting districts to stop certain populations from growing, trying to reduce other populations from growing will be that much more difficult. People who are familiar with this situation know that some of the elk population is over objective. He is not sure that everyone has a full appreciation of how far over objective and even meet the harvest criteria. In some of the areas, even with shoulder seasons need to harvest twice as many cows as we have been in order to stop population growth. Sometimes we need more than that to bring them to objective.

In addition to statute, Fish, Wildlife and Parks has been directed by the Governor, the Director, and repeatedly by the Commission to propose strategies and season types to move populations to objectives with considerations of antlerless only seasons. These kinds of seasons are identified in the plan. Dating back to 2015, all the Fish Wildlife and Parks proposals dealing with performance-based shoulder seasons in over objective hunting districts have been meant to comply with the law and meet Commission expectations. Having shoulder seasons per say has never been the Department's objective. Reducing over populations of elk to satisfy requirements of the statute has always been our objective. He will now move into the specific proposal.

FWP proposes three options for the 2019 hunting season for the Commission's consideration about performance-based shoulder seasons in the original 43 hunting districts. Those options are:

1. Maintain the current season structure in all districts, including early and late performance-based shoulder seasons for the 2019 license year, to allow for a more comprehensive three-year evaluation of season performance in late summer or early fall 2019.
2. Discontinue performance-based shoulder seasons in all districts until a full evaluation of their performance against the established criteria is completed.
3. Change the season structure for the 2019 license year in the five hunting districts most egregiously over-objective and falling well short of the cow harvest criteria. The other remaining districts would remain as is.

The third option proposes to change the season types and licenses in hunting districts 411, 511, 530, 540 and 580. All of which have performance-based shoulder seasons that failed to meet harvest criteria after two years. They are unlikely to meet the criteria in a third year. In addition, we would make the 004-00 and the 005-00 B licenses which are the regional licenses. These would become over the counter instead of limited draw. The purposes are to increase harvest of antlerless elk by focusing more on antlerless harvest in the general elk firearm season by changing the hunting districts to antlerless only harvest for the last three weeks of the general season and by increasing the availability of the B licenses. In general, the third option maintains the current based shoulder seasons because there is a substantial amount of antlerless harvest that occurs. In the last two years, 32 percent of the adult cow harvest of 590 cows in those five hunting districts has occurred during the performance-based shoulder season.

The third option would also maintain the current archery season. This would change the general license opportunity during the general rifle season to the first two weeks being either sex or spike antlerless as the case may be. The last three weeks would be antlerless only. It converts the limited draw of 004-00 and 005-00 B licenses to over the counter instead of the current draw system. This is to allow additional opportunity if and when hunters desire. It retains the special either sex opportunity permits. These are the 900-20, 411-20, 580-21, and 580-22. These would be good through the entire archery season and the entire general season. The five hunting districts identified in option three were most egregiously over population objective. These proposed changes are further explained with justification which you have there.

If you refer to the table chart that you have before you, the hunting districts or combination of hunting districts 411, 511, and 530 for example, were over 900 percent population objective. This is nine times over population objective. Likewise, in hunting districts 580, were five times over the objective. We are over population objective. As much as we currently do have the performance-based shoulder seasons, the other options are to go to some form of antlerless only during a general season opportunity. This is identified in the elk plan.

There are changes that he would like to point out based on some the comments that were received. He would also like to point out on table 2 that shows the current season and the proposed season. If you look at hunting district 540 the proposal as you have it shows archery and general season to spike or antler less only. We propose here to change that to general season either sex. This comes from what we have heard from folks but, also our staff in Region 5 who would like for this to go to an either sex opportunity. That is a slight change from what you have before you.

Hunting district 411 is currently bisected by the Red Hill Road that has different season types on the east versus the west side. The proposal that you have before you don't consider bifurcating district 411. The entire district is over population and we would like to address it. Any questions?

Chairman Vermillion stated they would take comments before they make a motion.

Commissioner Colton stated he some questions about the three areas that were identified in the proposals. He wanted to know if Mr. Vore could give him a figure on what sort of harvest that we would need and if the current shoulder seasons are close to touching any of these numbers. We are upside down in all of these by 400-500. Are we going to have sort of large harvest? What would it take? Would we have to take 900 to get under in 411 over in the Snowy Mountains?

Mr. Vore stated if you look at hunting district 540, you can see where adult cow harvest alone for the past two years 2016-2017 combined. We were short and needed to harvest by 438 cows. We would have to add an additional 200 or more per year to meet the minimum criteria.

Commissioner Colton stated he is struggling a little bit with the table. In 540 it shows the percentage that is over which is shocking to the system. He doesn't think that it is terribly out of proportion in relation to some of the other districts. District 580 is more out of proportion of where we would like to be. Addressing objectives is like chasing our tail. This will likely be talked about in our comments. When you look at districts 411, 511, and 530, we know the short shoulder seasons are not working. Is that fair to say?

Mr. Vore stated if you look at the same table, you will see the number of cows taken during shoulder season. There were 335 additional cows that were taken during shoulder season. During general season, you will see that 704 cows were taken. We increased it almost by 50 percent during the shoulder seasons.

Commissioner Colton stated that it was never going to be reached or be able to maintain that zero growth for the next three or four shoulder seasons unless we have dramatic spike. The reason he brought this up is because there is a lot of discussion about how this all came about. It was designed to be punitive and it's out of order. If we remember right, this was a topic that came to the Commission in October of last year. We made a deal with the sportsmen that we were going to reevaluate this in three years. It was the discussion of biennial season setting and the data that we were going to have. In the December 2017 meeting, we talked about how we were going to do that relying on two years data or were we going to make adjustments. In February, we discussed that again.

In August 2018, we were presented with the numbers of what has been done. We had the data and the surveys based on the areas identified as places in which may require removal of that area from shoulder season. This because we are failing the criteria and are continuing to fail. These are the three areas that the Department identified based on the criteria.

Mr. Vore stated that there were several hunting districts that did not meet the criteria. These are the ones by far that are most egregiously falling short. Of the five hunting groups, the three separate groups that were chosen because they were short of the necessary cow harvest by 400 or more. There are other hunting districts that have not met the criteria which are closer.

Commissioner Colton stated the ones that are picked out are the ones 400 or more.

Mr. Vore stated that was correct.

Commissioner Colton stated one of the things he found interesting about the comments that we received was designed to be punitive for the seasons. There will be more discussion of that. He wants to make it clear that his concern is that everything is drifting away from the guidelines that were set in 2015. In identifying the five hunting districts, these are the districts that were discussed and identified when we put the 2015 season guidelines together. They are failing. This isn't working. Those should be considered for being pulled out. There are several more districts that are not meeting this criterion either. It's a good exercise that we are doing our due diligence identifying those. We are automatically moving this on without any discussion for another year.

Do we know why districts 411, 511, and 530 is so under where we need to be? The latest count is 7200 and an objective of 800. Is that a weather-related issue or inaccessible populations of elk? What is going on here?

Mr. Vore stated it was the latter. Access has always been a difficult issue. We could design the most outrageous hunting season that you could imagine. We could have hunting 12 months a year and shoot 10 elk. If they cannot get to the elk, then it isn't going to help. We know access is an issue. It always has been in many of the districts.

Commissioner Colton stated we are liberal with our permits for B tags in that area. He thinks it is under subscribed in some of the applications. The current permit system does not seem to be a hindrance.

Mr. Vore stated Region 5 where there is the 005 B license. We currently offer 1500 of those and they sell out. In region 4 there is 4500 of the 004 regional B license that sell out. The proposal would be to make those available over the counter like the 002 B licenses.

Commissioner Colton stated there are 6,000 licenses on the landscape for 4 and 5 combined.

Chairman Vermillion asked about the letters BTA on the graph and what it stood for.

Mr. Vore stated that A stands for "all objectives being met", B is for the "bull objectives being met", and then gave up on the idea as he was building the map. So, they are basically scribbling on there that don't really mean anything.

Vice Chairman Stuker stated he agreed with Commissioner Colton that we have had many discussions about this. He believes that if we tell the people something, we have to live up to it. That is why we are here. The over objectives did not happen overnight. We are not going to cure it overnight. We need to have some plans going forward and cooperation with the landowners so as to figure out how we are going to accomplish that. He looks at this like a three-legged stool comprised of the Department, Landowners, and sportsmen. If we cut a leg off the stool, then we will not accomplish the objective. He wanted to follow up on a comment that Commissioner Colton had made about the B tags. The B tags that we currently offer through permits, we sell out in Regions 4 and 5 every year. Are there some hunting areas that we don't?

Mr. Vore stated in speaking about the regional B licensing, you will see in some of the places there are hunting district specific hunting licenses. Those are much fewer in number. Some are 100 and other are fewer than 400. The regional B licenses that are good in most of the hunting districts in most of the regions. There are 12 hunting districts in Region 5. The 005 B license is good in all of them. We sold 1500 of the licenses for 2017. We do not have 2018 data yet. Region 4 has over 30 hunting districts that offer 4500 licenses and we have sold all of those.

Commissioner Colton wanted to know if they were surplus or part of the draw? He thinks a large portion of them are surplus.

Mr. Vore stated could be. He does not have that information with him right now.

Vice Chairman Stuker stated that was what he also wanted to know how many were surplus. He asked Mr. Vore if he know how many of those were permits and how many applied for them. In total amounts are we getting close to 100 percent of the people who want a cow tag? Are we 30-40 percent lower for those who actually look for it? The over the counter tags is one thing he does like about the proposal. If we went to that how many additional tags might we sell if we went to over the counter sales versus the current system, we have?

Mr. Vore stated he could look it up in the regulations. The regulations have the drawings. The elk B license people can put it down as first choice. Many people use it as second or third. There were 2700 first choice applicants. He is not sure about second or third choice. The rest would have been sold on surplus.

Chairman Vermillion stated this would be available to residents and nonresidents in surplus.

Mr. Vore stated that was correct. They would be available over the counter during the entire season and as currently as Region 2. If someone did not shoot an elk and wanted to have an opportunity with a B license to go and hunt one, the tag would be available.

Vice Chairman Stuker stated we would go by the number that wanted them and didn't get them. So, we are selling them. It is 6,000 between the two regions then?

Mr. Vore stated for 005 we had 908 that applied first choice. They were still all sold out.

Vice Chairman Stuker stated when we get into the shoulder seasons, in October Mr. Vore you have mentioned that we had not done everything we possibly could for success because the season went to February 15 in a lot of the districts. His question was the thing that was holding back the harvest is the access to private property. Yet, in some of the hunting districts we are eliminating the Forest Service during the shoulder season. The elk are probably hoarding on private land during general season and then going to Forest Service land during the shoulder season. Do you think that could be happening? We want to keep elk of the public land during shoulder season. If we are truly looking to increase harvest, then wouldn't we want to include the Forest Service in the late season to take a larger number?

Mr. Vore stated he would like to address the first point that you made Vice Chairman Stuker about the length of the shoulder seasons. The first two years that we had these in place which are the first two years evaluated on the table

that you have before you. Some of the shoulder seasons went to January 1 and some January 15. We did go not the entire length of time allowed. The 2018 shoulder season are running until February 15. We won't have the data to evaluate all that until August 2019. That is one of the problems that speaks to Commissioner Colton's concerns about why we are not meeting objectives. The early shoulder seasons in 2016-2017 only went to January 1 to January 15. Regarding Vice Chairman Stuker's question about public land and Forest Service land in particular, the additional B licenses in some districts are 100. Others are 400. Some of the licenses are good for public land general season and intermediate shoulder seasons. We want elk on public land. We want to keep them there. We were hoping that having some on private land would help distribute them on public lands. If we had late shoulder seasons on public land it would exasperate the problem on private land. If there is no access allowed for shoulder season on public land, then that would allow for the elk to concentrate on Private land. It's a tough call.

Vice Chairman Stuker stated that could more stress on the landowners to allow more hunters in on the shoulder season. If they allow a little hunting, then the elk will all go over to the public land. If they don't allow it the elk will stay there anyway. If we are looking at it to reduce the numbers which the proposal seems to indicate, then he feels that would help. He has other comments on this but, he will stay quiet for a while and stay positive.

Commissioner Aldrich stated he was there four years ago when the guide lines were gone through and the trial season in Region 4. He has a history with this as he has been around for a long time. He believes that is we are going to get there then, we will get there together. He thinks that the option offered on page 55 regarding not having access to the game then remove them from the numbers in the area that you are dealing with. Given the nature of where we are headed such as CWD, he would hate to see us make those decisions biologically that is we can't manage them then we will just forget them. In an article that he read recently, we have only just begun to in relation to the numbers and what this could mean for the population objective. If we are going to get there with the structured and measuring based shoulder seasons, then the landowners are important. If they aren't in the game, then we don't have a game. We need to draw a deep breath and in August when we have the numbers for the completed seasons. We have a whole array of situations and will take a group of people to come together. We need to think about what tools are available. Before we get to the December meeting a year from now, we need to know what tools are out there that will take us to the next step. Progressively, we need to get there. He doesn't see in the plan where it is going to move us in that direction.

Chairman Vermillion stated that when he looks at the shoulder season in Region 2, how many of the districts are near or at objective? It is his understanding that some of the districts where there could potentially be a fourth season, that we are at or near objective or remove any districts that are at or near objective. We were not at objectives when we started shoulder seasons in 2016.

Mr. Vore stated that he took that information off the tables to fit on one page. He felt it was important to have the number of elk that they were harvesting. Commissioner Colton has the results that were presented in the October meeting. It shows for the 2017 season should have the population objective and the last count. That would show you the Region 2 information. In Region 2, most of the hunting districts that are included here are at least meeting the minimum criteria or coming close to that. We are moving in the right direction in Region 2. He attributes that to two things. As you know the season in those areas are until February 15. Another thing, Region 2 staff has done an outstanding job putting hunter and landowners together.

Commissioner Colton stated that it is noted that we are meeting the criteria. Most of these are dramatically over objective with the exception of 290/298. What is the proposal there in the areas where we have hit objective or 100 below objectives? There is nothing in the proposals that would address the whether we have met the numbers.

Chairman Vermillion stated he was wondering if the questions were answered. He was wanting to know if there was a need for a fourth shoulder season.

Mr. Vore stated there are elk that go back and forth in the districts as in other hunting districts. He would have to visit with regional staff to find out how elk move around. If you look at hunting district 212, 213, and the new 217, it shows a nice combination on the Flint Range.

Commissioner Colton stated that he wanted to have the discussion that they told the public they were going to. Looking at the table, we could easily be lumping three or four districts in with the five districts proposed, With the Chairman's permission he would like to go ahead and make a motion.

***Motion: Commissioner Colton moved and Vice Chairman Stuker seconded the Commission maintain the current season structure in all districts, including early and late performance-based shoulder seasons for the 2019 license year, to allow for a more comprehensive three-year evaluation of season performance in late summer or early fall 2019.***

Chairman Vermillion stated putting that out there for public comment we can just as easily in February make a decision to not to have any shoulder seasons for a fourth year.

Commissioner Colton stated that was exactly it and didn't think that it made much sense to do a combination. He thinks that one hits more to the heart of the matter. This Commission will be insistent that we act in accordance with what guidelines we established in 2015. That was the anxieties we expressed in stronger terms than others. That was the deal that was made. We then flopped into biennial season settings. Sometimes you have to take things out of order when they become important as you can see by the attendance in this room. Something as complicated as this and the creation of the shoulder seasons, he thinks it makes sense to meet the obligation is a bit cumbersome. That is the motion. Again, with the understanding that the comment goes when it comes in. We evaluate everything and met the obligation essentially to have three years of shoulder season by the time we have five days left.

Chairman Vermillion stated that he wanted to be clear about the motion. The motion can easily end up as option 2 or option 1. It could be a hybrid of both.

Commissioner Colton stated that would be the most likely outcome. There could also be an incorporation of depending on comment specific districts need more aggressive harvest methods.

Chairman Vermillion stated that the only option that is being drawn on is the one that would deal with the five districts that the Department identified as being over objective.

Commissioner Colton stated it was subject to interpretation if it would be dropped. If something comes up in the scoping, what we are asking is an evaluation of if they should go forward. They could be discontinued.

Chairman Vermillion stated he was taking about the structure of the general season that is not part of the motion.

Commissioner Colton stated it was not part of the motion.

Commissioner Stuker stated he agreed with Commissioner Colton and seconded the motion. We have to look at the different alternatives. This is something that he wanted to have looked at because after a couple of years, we forgot about the biennial season settings and getting information together after three years. By moving with this proposal, we are moving into the fourth season. If the community and the public agree, we will move into the new action and information in August. This will make it tough for the Department to get the shoulder seasons back on the ground, we will have time in August to evaluate the data. Commissioner Colton also mentioned that we need to get together and work on this. He visited with the Director and that was one of the comments that she made. We need to get a group together of all the affected parties. We need to have that conversation.

It also goes to what Commissioner Aldrich is going to attempt to do on the Madison. When individuals come in to the room, if we get a group together with open minds about the proposals and how they are going to have an effect. He sees proposal three as one sided. It's the Departments way or nothing, he thinks that has affected landowner-Department relations. In the proposal, it was not vetted with any land owners. It would have a huge impact on access. It's going to have impact on access already. The things that he has heard happened before people thought that this could be punitive towards landowners and address that. This is how it is foreseen out there. We need to have communications between all that this affects. These are some concerns.

We need to get a group together to figure out all the possible tools out there to bring the numbers down. He thinks all the land should be open. As a Department, we need to try to eliminate all the artificial means of barriers that we are putting forward. We have to understand the resident and nonresident situation that we will need to take into consideration. Maybe some of the landowners aren't going to like what he will say next but, if they do not allow access the numbers will continue to go up. He strongly supports the motion. It is now what the Commission passes and what

the public comment is. In February, we do the final. We will have the option of moving it forward or kill it until August when the information is presented to us.

Mr. Vore thanked the Commission for the comments. He also wanted clarification on the motion continuing the current season structure and did not make the 004 or 005 over the counter.

Chairman Vermillion stated that was correct.

Commissioner Stuker stated in February that it's brought up now and there is a lot of information brought forward in favor of those, we could add those to the motion at that time if we so desired. Is that correct? He asked legal to correct him if he was wrong. Once we have the comments, we will know whether we add things in, subtract things, and if we have districts in Regions 2 or 1 that have met the objective levels. Taking the objectives into consideration we can look at whether to cut seasons back or lengthen them as we move forward.

Mr. Vore stated that has been the plan all along. When a group of districts meet the population objectives, 27 percent above or below then the shoulder seasons would go away.

Vice Chairman Stuker advised he didn't mean to say go away. What he did mean was, can we stay within the number.

Chairman Vermillion stated that would be where the rub is. There are a lot of them. Down the road if the Department is going to take the position to continue to be in objectives or perpetual over seasons. If the answer is yes, then that will be a whole other conversation. That is not what we told the public we would do. This would be part of a whole different conversation. There are a couple of things to remember, the public comment today should be on whether we continue the current seasons. This is not about the structure. Some of the best comments that he saw for the elk season was an acknowledgement that our objectives are no longer a reflection of what is happening on the landscape.

If we are going to remove the logical management response for the chronically over objective, maybe move into an antlerless only hunting season. It is deeply controversial, and no one likes that. If we are not going to deal with that part of the elk plan and not implement it then do the same with the objectives. The objectives aren't working for the public either. He knows the Department is concerned about opening up the objective numbers. There is a lot of influence in this room and how politics are made. Typically, we see what happens every two years when the Legislature beats the heck out of the Department and the Commission for not meeting management objectives. We need a defense. It would be nice to have some sort of conversation. The objectives are 15-20 years old.

When you have the opportunity at the Legislature to talk about this part of the discussion. All we do is get beat up on what we do. All we try to do is comply with house bill 342 and try to live with for the last 20 years or so. Imagine being told that elk will be managed to 700 elk in southeastern Montana and then tell people in Billings and Miles City that we are going to shoot 99 percent of the elk. People aren't going to like that. But if we are going to comply with what the Legislature has told us to do then, we should. This is a conversation that both Vice Chairman Stuker and Commissioner Colton has mentioned as well as Commissioner Aldrich and Brower. This is a partnership. The partnership is just not at the meetings. It is in the legislative arena. He would sincerely suggest that if we want to move this discussion in a much positive light going forward then what we really need to work on is how people talk about the Department and its elk management objectives. The way things are happening right now makes us look like we are not doing our job. He doesn't think that is accurate or fair.

Rebecca Dockter, Chief Legal Counsel stated Vice Chairman Stuker asked a question about whether or not to make changes to the proposal based upon public comment, if we indeed get public comment. What she heard was we were just limiting public comment to whether or not we should have shoulder seasons.

Chairman Vermillion stated that was what the motion was.

Commissioner Colton stated people can stand up and comment on whatever they want. From a stand point of have a productive discussion. It would make some sense for today because there is two more months of public comment. If people want to be insulting, we can't stop them. We are focusing on what the motion is. It is for the Commission to decide of this is a tentative motion.

Ms. Dockter wanted to clarify if we want to reserve opportunity to hear from the public and get particular public comment. You would be best served to put that in a motion then in a conversation here. As Commissioner Colton, has mentioned, you can adjust whatever the proposal is in the final based on what we do get from the public comment. If it is vast you can adjust accordingly. If not, however, given the public comment being requested only on whether or not we continue shoulder seasons we may not be able to. I am only giving you the caveat here.

Commissioner Colton stated that before we go out to comment we need to focus on what Chairman Vermillion has said. We are never going to get out of shoulder seasons and this type of management if these are our objectives in some of the areas. If you look at the Snowy Mountains and the objective of 800, we are going to be in shoulder seasons with catastrophe in the populations. There is no way to shoot yourself out of that. That permeates this discussion too much. He likes what the Department has done in terms of the objectives and if the shoulder season is working. Are we at zero growth? All the documents say we want to manage by objective. As long as we meet objective, then the shoulder seasons are going to continue. It is not sustainable with the objectives that have been set in a lot of the areas.

Mr. Vore stated the comment that he made in his introduction regarding not meeting stopping population growth at this level. Even if we increase the population objective to a level that we currently have on the ground. Say 5,000 elk would be out objective, we would still have to keep the population from growing. If we can't keep it from growing now, then we certainly wouldn't be able to keep it from growing in the future regardless of where the objective is set. He is not saying that they shouldn't revisit the plan.

He also wanted to point out a few things. Vice Chairman Stuker spoke to that fact that we did not get here in a day and that is absolutely right. It took a long time to get where we are. It is his guess that will take a very long time to get out of this situation. Our sister state to the south is having similar problems. They have been trying to manage populations for over nine years now. They are presently starting to see some results.

What they have learned from performance-based shoulder seasons is when we put together the guidelines, we had no experience with them. Now we have the experience and we are learning which will take a while to get there. The three-year time period may not have been the right time to choose. It will take a while regardless of what we do to get the populations turned around. We can address them as they get close to population objectives.

Commissioner Colton stated what has frustrated some folks, that some of the other Commissioners touched on was that in terms of what the elk management plan said about using tools to get to objective to stop population growth. Those things can't be discussed without a lot of energy being expended. It's the job of the Commission regardless of how we feel on the issue. This was a plan that was approved. These are the tools that were designed if we were headed in this direction. When we mention those tools, then you don't want to talk about that. This was the elk management plan that was approved. He doesn't remember that getting shoved down anybody's throat. Some could argue that we have deviated away greatly from the plan in terms of management of populations.

Mr. Vore wanted to remind that when the plan was developed with extensive meetings. He fully agrees with getting people together and getting ideas. That was the process when the plan was established. We had a lot of public meetings and input at the time.

Vice Chairman Stuker stated he agrees and disagrees with some of this. He thinks there was a management plan. He realizes things change and we move forward. Some of the things in the management plan worked, some didn't. he felt some of the things were inappropriate. He heard that comment when he first came on to the Commission from senators. So, watch what you do in that regard. He had nothing to do with putting that all together. So, he doesn't want to add anymore to that. We have to look forward to what we can do now with the number we have and the different opportunities that we have.

Chairman Vermillion did mention that we do get beat up by the Legislature on different issues. Sometimes he thinks that is justified. He has voted for proposals that they did not like. When he looks back on it he wishes he would have voted differently. He understands that they have their constituents out there just as we have sportsmen, landowners, and other stakeholders. There are also environmentalists that we deal with and need to understand their concerns. He would like to make a request of everyone here since it was just mentioned whether it is a fishery issue or another. He doesn't like insults being thrown at Department people or the Commission. If you want to point him out specifically that's fine. He asks that when comments are allowed that everyone be civil stick to the point and we move forward

from there. We will accomplish a lot more in that context than if we were to get confrontational. He doesn't think that is a good way to move forward.

Public Comment.

No public comment from the outer regions.

### Region 3- Helena

Mac Minard, Executive Director, Montana Outfitters and Guides Association, stated he wanted to congratulate the commission on how they opened the subject today. He feels that they did exactly what we needed to do to have that conversation. He doesn't think that this will blow up. He thinks the direction that it is headed is quite positive. It does make it difficult to reorganize. He supports moving into option 1 of the plan. We should keep that on the table and consider our options. It took 30 years to get here and a few years to get out of here. He seriously doubts that we are capable of shooting our way out of this. It occurred to him that it is a better problem to have too many elk than not enough. We are thankful for that, aren't we? In a 15-year period when some of these objectives were designed, we should routinely reevaluate the objectives. We do it under the context of what the environmental conditions are doing. It is very conceivable and the demographics of Montana changing. We may be in very favorable conditions that we may not get enjoy a decade from now.

It is conceivable that you are shepherding something that is unique and possibly temporary. In the broader context, this something he will put on the table for the Commission to consider and bring forward into additional conversation. He would like to see the shoulder seasons maintained until the 15<sup>th</sup>. If we are going to kill elk, then let's get serious about removing barriers and extending the season to a reasonable amount of time. As for the over the counter B tags, he thought the exchange was enlightening and his assumption was having to apply, receive, and even if they are unlimited could be an administrative barrier for the average person. Maybe that is not true. Let's make this as simple as possible. It probably wouldn't hurt to increase the bag limit to two cows and limit it to one bull. The incentive would be to harvest a cow without it affecting the bull tag. It would give families the opportunity to do so. We wouldn't want to have wanton waste.

He thinks that the idea of expanding into public land makes a lot of sense, it does put it back on the private landowner because of the sanctuary areas. One example would be when he and his daughter had an opportunity to hunt at the end of the season. We dropped into a hole of state land and shot a couple of elk. It was great effort to scatter those elk out of the state section into the adjacent private land that was part of the shoulder seasons. Had we not done that then there would be 300 elk that no one is going to touch. You will hear from a lot of good people today. He appreciates the tone in which this is going. Thank you.

Vice Chairman Stuker stated he did not mean in his earlier statement that there was going to be yelling and screaming during the meeting. He merely wanted to state his position. Thank you.

Brian McCullough, Helena, stated he is a big game hunter and hunts every season for the last 56 years. He came before the Commission in December of 2017 to ask why the seasons were cut short in the districts that you are adjusting. He was instructed to visit with Mr. Vore and Region 5 to find out the reason for cutting the seasons back. They advised that they recommended February 15 and it was the vote of the Commission to hold the seasons back in 2016 and 2017 to January and February 15. In the spirit of transparency for all the sportsmen and so on, he is asking again why in 2016 and 2017 was the hunting districts that were egregiously over objective. Why did you choose, when the biologists recommended that the season go to 2015 to adjust it back to January 1 or 15? Does anybody care to respond?

Chairman Vermillion advised he would address the question later after comments.

Mr. McCullough continued to say that another issue with the statistics we have relative to the shoulder hunts that you are reviewing shows 10,985 cow elk harvested in shoulder season. It is clear that the general public enjoy going out and harvesting elk. He has been chasing this issue for over six years in front of the Commission and the Legislature. The 2,074 elk that were harvested during shoulder season it is clear to him that the general public is interested in harvesting cow elk. The hunting groups and individual hunters that also came before you to tell you they did not want to do that. We don't want to help landowners with the relative supply. The hunter population is very diverse, and they

enjoy the opportunity to hunt elk. He wanted to thank the Commission for endorsing the shoulder season and having it in place. He requests that the Commission through the staff to estimate the amount of acreage through private land that has been opened up while elk are above objective for hunting opportunities for the general public. He would like to see how much ground has opened up that way.

In the spirit of transparency, he would like to see the information that was given by the hunting organizations that are proposing the issues although we have this data that shows so many people enjoy harvesting elk. The performance standards that were put in place by FWP in the front end of this did not include the variety of issues that he has brought up in the past. These issues include hunter opportunity for cow elk has increased with a longer hunting period. How much is that? Let's not lose track of the benefit of that. Hunter access to land has increased because of the shoulder seasons. Landowners relations have improved. The Commission is in support of landowners and working through the issues. This is a tough issue no doubt about it. We need to share the different understandings relative to hunting. You think you are being beat up because of the Legislature. What about the landowners? They are accused of not allowing hunters and not making a living off their land. Hunters provide an economic benefit to the businesses in rural Montana. This should not be ignored as the elk are over objective. Small businesses appreciate the hunter traffic. Elk are moved from public land to private land which also reduces damage to the habitat. A good example would be the wolves in Yellowstone and he thinks that is a good thing for the management of elk. He would like to follow up by December 30 information regarding Montana landowners being required to allow the general public to hunt on their lands. He wants to know what the laws are that mandate landowners to give access to hunting. Thank you.

Chris Marchion, Anaconda Sportsman's Club, stated they support option 2 of the plan. Let's discontinue the shoulder hunts and reevaluate what has been done. An example that is upsetting is when they extended the shoulder seasons, our club was never consulted on that. The only comment s that we made were last year on the Spotted Dog management area to extend seasons and we opposed that. That was the only proposal that we saw. Our membership did not realize that there were shoulder seasons proposed all around our districts until we picked up our maps. People could not believe it. Hunting District 214 is almost all public land. We have a long history helping build up that elk population. Twice, 20 years ago, we got volunteers together and went to the Wallace Ranch to help move elk from the ranch to our area. It is not a huge elk herd. The objective is 350. We have never ever been at objective. Yet we are going to offer hunting on our winter range until February 15 where elk have decreased from 250 elk to 150 elk. The objective is 350.

Do you think we are angry and insulted? Looking at hunting districts 211 and 217, they are not as bad. We understand the issue in 215. We would like to help out and do things. What has happened here is insulting to us. What is bothersome overall about the extended seasons is 20 percent of elk hunters harvest an elk. You have the extended seasons and B tags. So about 25 percent of people harvest an elk and 75 percent do not. Is it for lack of effort or access? When he looks at his club and the members, they are becoming disinterested in elk hunting because of the numbers. There is a lot of elk and a lot of public land. Because of what is going on, it has really discouraged people. He is concerned long term about the future of hunting.

Nick Gevock, Montana Wildlife Federation, stated that he appreciates Mr. McCullough's opinion on elk hunting. He has sharp disagreement with effective elk management. We need to talk about any opportunity to limit the length of shoulder seasons. We are concerned about the loss of support from sportsmen and hunters who undecided about the value of a hunt management tool. With six hunting months out of the year, there is concern about extended hunting on already stressed and on winter range. There are concerns about shooting elk in deep snow that limits their movement. He feels that is bad for the image of hunters to pursue any species for six months out of the year.

Based on antidotal observations the earlier shoulder seasons are having an impact on elk distribution and breaking up the herds as well as moving herds on to federal and state lands. We encourage you look at this for future season structures. The whole idea of performance-based shoulder seasons was once the district was at objective it would be discontinued and then we would focus on the archery seasons. To manage out elk we still have many ample tools that address specific landowner concerns. That is all identified in the elk plan and the arm rules of Montana that address that plan. We develop this with the criteria that we need a good general season harvest to properly manage elk. We know from the past the old late seasons were not effective in getting the cow elk harvest we needed. the herds were moving around responding hunting pressure, finding refuge and keeping us from getting the broad harvest that we needed across the landscape.

Mr. Gevock thinks that there would be strong resistance to late seasons on public land. That would be the perspective of sportsmen. In our comments today, we are moving that two weeks of bull elk hunting, and three weeks of cow elk hunting could help focus our harvest on three weeks of general season on cows. He knows that this is off the table now. Maybe try that for one year and see if it works. The season harvest that is used in Devil's Kitchen had been successful. We are very concerned about shoulder seasons on districts that are under the objective. That in itself is not meeting the criteria. The idea of killing more than two elk take a statutory change and he doesn't think that is a fight we want to have. He thinks that there needs to be a discussion and we are at a point where we are going to shape our seasons and stick to the criteria. Vice Chairman Stuker stated earlier that he agreed to stick to that plan. If we go with next year's seasons, we will have the regulations out and we will have those.

Based on the discussion he heard from the Commission, maybe we should eliminate the season, get the data and have an addendum perhaps have a meeting in July. We could do some publicity around this. That would help us do a serious evaluation of three years' data. Those are our comments and we will submit written comments as well. Thank you.

Dagmar Riddle, Whitehall, stated FWP has tools that were introduced for the very purpose of the problem that is going on here with the over population of elk. We need to get rid of the no quota six-month hunting season. If it is too much for elk, then it is too much for wolves. The latest count was 550 wolves. Over 100 have been killed during the hunting season. We still have half of the trapping and hunting season to go. Wolves would be a good tool.

We have a more serious problem confronting us right now. We need healthy wolf populations and six-month hunting season as well as being over quota is too much. We are insisting that the weekly wolf report be reinstated. In the 2014 end of year count and what was happening...

Chairman Vermillion reminded Ms. Riddle that this was not discussion about wolves. She could comment during open mic at the end of the meeting. He only wanted discussion on elk right now.

Ms. Riddle stated that it would be a good tool to use wolves to control elk populations. Thank you.

Tanya Hill, Galt Ranch, White Sulphur Springs, stated hunting district 446 has not been mentioned. The Galt ranch does have land in some of the districts that have been mentioned. She stands opposed to making the historical general elk season hunting seasons antlerless only. She feels it will weaponize FWP regulations to force landowners into giving additional access. In the past, the exact threats have been made FWP staff in our district. The shoulder season process has been a huge success on our ranch. We have seen number go down and the elk have started acting like elk again. They are no longer bunching in huge herds which was devastating our fields and pastures. The shoulder seasons have been successful for us. There is one year left in the original plan to determine the performance of shoulder season. They have worked in all but two districts.

She is shocked that this proposal has been altered to include the option of closing shoulder season. She feels that it is another indication of FWP using hunting regulations to force ranchers to comply to demands. Forcing ranchers with threats has not worked for well over a century. This idea will yield the same results. After the implementation of the shoulder seasons, over 30,000 acres of Galt land has been put into block management. That is largely in response to FWP wanting to work with ranchers again. She knows of no FWP field personnel that thinks an antlerless season works better than a shoulder season. She thinks that the shoulder season was ever suggested was purely punitive. There is no doubt that Montana has changed. It is nearly impossible for someone her age to get into the ranching business.

Non-working trophy ranches have driven the purchase prices up for traditional agricultural ranchers to utilize and generate options at their disposal. We are worried that ranching as we know it could fail. This puts the Montana cattle industry at risk. A good year is when all the checks clear and the hunts are filled which pays less than half of what we pay for the damage that the elk cause us. That is not only in grass and crops but, labor and materials as well as cattle recovery from the elk. Since unrestricted access is the goal, she would hope that you know that change to antlerless will only damage the likely hood of any outfitters in the district and the opportunity of hundreds of non-paying hunters. We have a long-trusted relationship with outfitters and the non-paying hunters that have cultivated good relationships within the Galt Ranch. These are relationships that we will fight to preserve. Recently in the Great Falls Tribune outlined how outfitted trips are driving many of the outdoor recreation that is touted across the state. The original proposal puts all of that at risk.

Shoulder seasons have worked across the state. This would short circuit the process started on the Galt Ranch with personal efforts from Governor Bullock. She supports option 1. She feels would hate to see FWP resort to field policies of the past where manipulation of the regulations would leave hunters and ranchers holding the bag to get to the numbers addressed by the shoulder seasons. No one should expect to make substantial changes in two years. Thank you.

Jack Galt, Galt Ranch, stated he 18 years of age. He was born and raised on the Galt Ranch in White Sulphur Springs. He is here today to express concerns regarding this proposal representing all Galt families and our properties that have been managed since the 1960s. he has personally witnessed the over population of elk on their land and the devastation that large herd of elk can do to hay fields, pastures and fences. This damage greatly diminishes the caring capacity of cattle on our land. Elk are contrary to a good restoration system as well as tripling the time and materials used for repairs. All of which threatened the financial viability of the ranch.

He can speak to the things that have happened in his lifetime. He has been told by family and crew 25 years ago, a late season was utilized to decrease the cow elk numbers. The season was taken away by an FWP biologist and the local season setting meeting who stated, "We will over run Bill Galt with elk until he welcomes the public". Since then, we have tried unsuccessfully any possibility given to us by Fish, Wildlife and Parks to manage the elk properly. The shoulder seasons pioneered on the Galt properties have only been a measurable success in his lifetime. The elk numbers are down and the devastating herds are breaking up to relocate. They are acting like elk again. Over that last four decades the ranch has seen. Fish, Wildlife and Parks have done a great job managing both block management and the shoulder seasons over the last few years.

New policies of the Fish, Wildlife and Parks are supposed to open and transparent. This plan appears to be neither. Local personnel were not aware of this change. Why is that? The change is short circuiting for the third year in certain districts. Based on the elevation of concern of FWP the elk are over quota in some of the districts. Why is the known process not being followed? Thirty years of failed game management cannot be over turned in a couple of years. He supports option 1. Relationships with FWP and local personnel have grown in a positive manner throughout the shoulder season process. This has the potential to ruin as well as challenge relationships on hundreds of non-paying hunters on the Galt Ranch. As a fifth-generation Montana rancher, he is young and worry about policies such as these taking hold and interfering with his ability to maintain a productive ranch and pass it on to the sixth. Thank you.

KC York, Hamilton, stated she was listening to the comments about the overabundance of elk regarding shoulder seasons, extended seasons, and with CWD that is indicative of access numbers and unhealthy populations. She is hearing nothing on the value of predators and helping keep the prey on check and in good health. What she hears prolifically is wolves are eating all the big game. We need wide spread and diligent education on the value of predators to the ecosystem. She asks that FWP step up those efforts and the Commission encourage that. Thank you.

Jim Straun, York, stated he appreciates the two tag seasons. His family are long time meat hunters of district 446 and 445 adjacent to the Galt Ranch. There are other big ranches and smaller one surrounding the area. Outfitting helps manage elk. He didn't want to talk about the elk numbers so much as what he has observed up there. He has lived in the area his whole life. He wanted to talk about the amount of grazing and feed available for the elk during big game season especially why there wasn't more elk on public lands. He attributed a big part of that to less feed on the public lands. What he has observed off Elk Ridge and has never seen any elk tracks in late December or January. He ran into some bull elk that are not usually there. He didn't see any signs that they were getting good grazing.

He stopped at the Forest Service office and asked about how often they review their plan and the winter grazing. He was informed every 25 years. He wanted to know where they were in the process. They said they were half way through. He asked why they weren't addressing these things more as shoulder seasons were in progress, the feed levels and some of longer hunting seasons. He e raised some concerns. Later there were meetings with the Montana Stockgrowers and the Forest Service to address some of the issues. He thinks that if the elk could be moved to public lands during the winter seasons that would help hunters fill their cow tag early and not have to worry much about the bull tag. He thinks that would-be incentive to shoot elk. Thank you.

Chuck Rein, Big Timber, stated that he is heartened by the comments and the Commission's decisions. Solving problems is about relationships. If we can sit sown as a group and talk about some of the issues and actually come to

some kind of agreement or resolution. This is a tall order to shoot our way out 11,000 elk in the five districts. It has been brought up a few times about failed policies. Not all have failed. He has statistics from this Department of what happened to elk counts during our late cow hunt and what happened to the numbers after we discontinued those hunts. He never got a good explanation given as to why we stopped the hunts.

In 2007, there were 123,571 head of elk counted in this state. That was the end of our late season cow hunts which were popular. They weren't controversial. By 2017, we gained over 53,000 head of elk. He is not here to blame anyone, but that was a plan that worked. It really wasn't that controversial. He brought this up because there is hope to solve this problem. Will we ever get to objective in 580? It'll just be a blood bath if we do it. It is not going to play well in the press. We need good public reception to address this problem. He wants to commend the Commission for keeping this thing going. Option 3 will not play well. It would have closed land. He is glad we did not go there. That wasn't going to solve the problem anyway. He would appreciate the opportunity to work on this sown the road. Thank you.

Senator Brian Hoven, Great Falls, stated he is here regarding a letter that was posted to the Commission website about changing the antlerless season. He has heard a couple of things. A problem we have is access and it is a problem that can be solved. It is going to take some effort to solve. The gentleman that was up here earlier mentioned that we didn't have a problem in district 2. He stated that the landowners and sportsmen got along well. They had good relationships or an over of abundance of elk. We could also transplant the people of district 2 into district 4. We should look at what we can learn from what they have done. His final point about the situation that we are dealing with is that a top down solution does not work. It has to start from the bottom up to include all the parties involved. This includes the landowners, outfitters, hunters, and FWP. If we can get these four groups together in agreement, then we have solved the problem. Thank you.

Rob Brandt, White Sulphur Springs, greeted Commission and stated that he was very concerned about the proposals that were brought before us. He wanted to thank Commissioner Colton for his motion (and Commissioner Stuker) as that was the best option that was put before us. The threats to shorten the bull elk harvest in the regions was very concerning. He sees a lot of the outfitters and landowners are here today. He feels that if everyone works together they can agree on how to meet objectives. As a sportsman recreating in this area, as well as being a community leader this has an impact on the community. If we can all reach agreements on other community events such as Red Ant Pant and so forth, we can do it through hunting season. Since the shoulder season was extended, we have had a lot more visitors. It's not just out of state people coming in, as not everyone wants to pay for an outfitted hunt during the shoulder season. It's the visitor dollars that come through our small towns during the shoulder seasons. This allows to have the restaurants and lodging open all year round. He urges the commission to continue to look at the shoulder seasons and wait until there is three years' worth of data. He would like to see objective decisions as opposed to antidotal decisions. It's all that we can do today. We haven't gotten to the agreed upon season closure data review. This is what his testimony was going to be but, since there is a motion on the floor he would like to focus on the economics. A community leader, he would like to encourage the Commission to keep doing what they are doing today. Thank you.

Mary Ellen Schnur, Townsend, stated that the regulations are FWP's bible. It says 2004 and things have really changed since 2004. She looked at District 540 that is part of an eight-district management unit. In 2004 some of those districts were already over objective when the plan was written. District 540, according to your figures is 325 percent of objective. During the years since this book was written, hunter numbers have increased by 50 percent in that area, increased seasons such as bull season to either sex season, shoulder seasons, and the elk population has increased faster than all three. Her suggestion is to look at out of the box suggestions going forward. Three years isn't enough to make the shoulder season do the job that it was intended to do. She doesn't understand why B tags for this area is on a drawing. They should be over the counter, so anyone can get one at any time. Remove the obstacle of limited entry b tag when you are trying to optimize your harvest.

She thinks that anybody (and this would take legislative measures) who buys an elk tag resident or nonresident should get a free B tag for one of the five districts. Do this until you feel better about where the population is going. She outfitted in 540 for ten years or more. The hunting was good and we would tell our hunters that they could buy an additional elk tag. They were concerned about having to spend another \$275.00. They were still happy to be able to harvest either sex elk. She is sure that it would have been easier to talk the hunter into another tag if not for the price. Idaho does this. They give free tags for this or that. The hunter is allowed to use the tag in place of another. This helps their population issues. She feels that FWP should take a look at it. Thank you.

Jeff Herbert, Montana Sportsman's Alliance, greeted the commission and stated that he would keep his comments brief. He has history with late seasons that date back to the late 1970s. He doesn't think that if one wants to pick complex wildlife management issues, that one can find anything more complex than the elk in the western part of the states. It brings all the elements to bear to create all the contentions to all the user groups. He thinks that there is a four-legged stool and not three. We have the landowners, FWP, hunters, and outfitters who all bear the responsibility in helping us move forward. It's not going to be easy or pretty but, he thinks the public trust resource that we talk about such as the public rights and conventions we believe in. Ecologically, we are going to put elk at risk if we allow populations to grow and some of the disease interventions that we are already seeing. He knows some of the folks that are part of the leadership group strongly believe in our six-week archery season and five-week general season which is one of our most liberal hunts for the public.

The use of shoulder seasons was appropriate and based on performance-based criteria to try and reduce the numbers. He thinks that whenever we get to the point of having a discussion about the effectiveness of the seasons, we have to look at the criteria of how those were assessed relative to the gains that were made. Part of this was to increase the cow harvest during general season. Please adhere to the criteria that was put into place and don't be surprised if things come up short in terms of our harvest. A three-year window is a short window. You definitely want to have the full three years to evaluate where you go. He thinks that it is important to remember where we are trying to go and how we are going to get there. We need to have objective in our discussion of what is next. Thank you.

Kris Killorn, Southwest Montana Safari International, stated he supported the decision of the Commission for option 1. We do not believe the reduction of the bull harvest season is going to reduce numbers. We do believe in extending the shoulder seasons. He attended some of the meetings that was held around the state last year. There were more land owners that would rather the season go until February 15. He feels that this creates a bridge for the landowners and sportsmen to get together. The landowners depend on the outfitters check. The shoulder season gives them opportunity to bond with the community as well as sportsmen. We need to give shoulder seasons time to work. He remembers when he was young he would see the elk on the land and that is where they always were. Landowners and outfitters would allow you access to go in and harvest a cow. Taking a cow for meat is just as good as getting a five-point bull. If the take rate on hunters is 25 percent. If he sent out an email stating that they need to harvest 500 bulls, he would be able to find the hunters to do it. Thank you.

Dave Stone, Anaconda Sportsman's club, stated that he is speaking on behalf of himself. He stated that he is not a fan of shoulder hunts. Killing elk in February is not a good thing. The elk are very vulnerable. If you add another district to the shoulder hunts. He feels that the sportsman's clubs should be notified. He thinks it should be discussed as to whether or not the shoulder seasons are needed in the designated areas such as 214. He doesn't think a shoulder season is needed in 214. Half of the district was saved so we thank you for that. The elk herd that we planted is still there. He asked that in the future because they have biologists and would invite everyone to come to their meetings. He feels that his group should be notified so that they can comment on it. Thank you.

Eric Albus, Outfitter and landowner greeted Commission and stated he appreciates the steps that has been taken on this. As a landowner he is here to show solidarity with the other landowners who have spoken ahead of him and the others who have not. As a sportsman he appreciates the opportunity for the shoulder seasons. He as someone from the outside looking in will get an opportunity to harvest a cow. That is better than the opportunity to harvest nothing. As a sportsman a cow elk is better than no elk. As an outfitter he is glad that option 1 is being supported. It will keep some of the outfitters in business that could have been put out of business. Thank you.

Chairman Vermillion stated the outcomes of the discussions at the commission level that there seems to be a willingness to engage in some discussions that we have not had before. The one thing that he took away from this is that it is a partnership. How do the landowners work with the sportsmen and vis versa? How does the legislature fit in as they are our bosses? They have put forth very clear intent for what they ant this Department to do. This commission is charged with how to get to compliance with the statutory direction of the Department. We are still struggling. Someone said the reason we are over objective is the game management. He does not feel that is the case. It's mostly a social question. How do we get people on the landscape to deal with elk or other wildlife that people want us to manage? Whether you go knocking on every landowner's door to hunt elk is not how this conversation works.

Our Legislature has told us that we need to manage down to this number. He doesn't know how else to do it. When you are hunting elk from August 15 to February 15 we can't necessarily shoot our way there. What we should probably talk about is population growth and not population reduction. He thinks that would be a healthier discussion because that is something we can actually control. With the execution of thousands of elk, we are not going to meet objective. Our elk populations are growing. He doesn't think the shoulder seasons are going to help control this. We need a solution that respects the public ownership of wildlife and landowners' rights to say yes or no to hunting on private land. We need to work with the Department and the Legislature to have these conversations to be more cooperative and consensus based opposed to confrontational.

The 12 years that he has been on the Commission there has never been more of an issue with dividing Montanans than elk management. It is unfortunate as we all appreciate this animal and it's huge success. We are looking at the tool box and there is a tool that had not been used. When this proposal came forward it is not surprise that it is not popular. That does not relieve us of the responsibility of complying with House Bill 342. Even if we do one more shoulder season, we will not be in compliance with House Bill 342. We could do five more and still end up in the same place. He thinks the Department and the Commission must consider whether or not to have a fourth-year shoulder season without the data from the third year. When we sat down with the public and came up with a compromise, part of that was for three years and the other was that people felt we shouldn't be hunting elk until February. There is no right or wrong answer to that question. It is basically values. The decisions are a compromise between four groups of people that a vested interest on how we move forward.

Maybe it is time to put together another committee to work on a new elk management plan. He feels that is five years overdue. He stated the biggest focus should be on population growth and how to manage that. He thinks that if we are looking at growth rather than reduction that we would be more successful in management. He doesn't think that Montanans have the stomach to manage the elk numbers down to the objectives of 700-1200 throughout the districts. That is not a lot of elk in those areas if you think about it. We need to fix this and fix the framework from which we are having this conversation. We are still probably going to be at odds with each other but, the sooner we fix this the better we are to succeed. He will vote for this but, he hopes that the discussions going forward take the issues that have been raised by the public into account.

Vice Chairman Stuker stated that he agrees with some of the things that were said. That is what he going to address is that we have to communicate and work together to get the numbers under control. Mr. Vore stated that unless we can figure out how to control the growth numbers or reduction. If we don't figure that out, we will be right back here again. It will probably be worse. We need to look at the objective numbers in different areas and manage to those numbers that we have now and for the number of the future. If we can get together and communicate, we have a chance. It's not going to be easy. If we want to resolve the problem we need to work together. Everyone will have to compromise a little. He will support the motion.

Chairman Vermillion stated there is an article that everyone should read. It came out two or three weeks ago about Colorado and the late season hunts. What they are finding in a lot of the districts is that even though they stopped the hunts the populations are not recovering. You would think if you stopped hunting the elk would recover but they are not. We are living in a time where the elk are abundant. We don't want to go back to the 1930s. we have a lot of elk right now but, that doesn't mean that we always will. We need to be careful on how to move forward on this. We should look at not harvesting elk at the wrong time of year.

*Motion passes 5-0.*

#### ***24. New Rule: Grizzly Bear Demographic Objectives for the Northern Continental Divide Ecosystem***

*The Northern Continental Divide Ecosystem is one of six recovery areas identified in the Grizzly Bear Recovery Plan. Grizzly bears in the NCDE are currently listed as threatened under the Endangered Species Act, although they have met their recovery criteria and may be proposed for delisting in the near future. The NCDE includes Glacier National Park, parts of the Flathead and Blackfeet Indian Reservations, parts of five national forests, Bureau of Land Management lands, and state and private lands. Recovery of the grizzly bear in the NCDE has been focused on a core recovery zone and a buffer area around it, identified as Zone 1. Together, these zones make up the Demographic Monitoring Area, where the objective is continual occupancy by grizzly bears, facilitated by maintenance of*

*compatible habitat conditions and population criteria. The DMA encompasses more than 16,000 square miles (or 42,000 square kilometers).*

*Managers from federal and state agencies and the tribes have developed a draft "Conservation Strategy for the Grizzly Bear in the Northern Continental Divide Ecosystem," which is intended to guide management of grizzly bears once they are delisted. All are expected to sign the Conservation Strategy, thereby agreeing to use their respective authorities to maintain and enhance the recovered status of the grizzly bear in the NCDE after delisting by implementing respective regulatory mechanisms, interagency cooperation, population and habitat management and monitoring, and other provisions.*

*To delist a species or distinct population segment of a species from the ESA, there must be adequate regulatory mechanisms in place to ensure that it will not once again become threatened or endangered. Montana is proposing to adopt the demographic objectives of the NCDE Conservation Strategy into administrative rule to demonstrate Montana's commitment to maintaining a recovered grizzly bear population in the NCDE, as well as strengthen the regulatory mechanisms associated with population management.*

*A 60-day public comment period was held on the proposal, which included public hearings in Conrad, Great Falls, Missoula, and Kalispell. One hundred ninety people signed in at the hearings, and 35 oral comments were taken. The commission received over 5,200 comments total, with a majority of comments focused on bigger picture grizzly bear conservation outside the scope of this specific rulemaking, such as delisting, hunting, and on the Conservation Strategy itself.*

*The commission can choose not to adopt or transfer the rules, which would leave the Conservation Strategy in place but would not add to the strength of Montana's regulatory mechanisms.*

*The commission can adopt the New Rule I with amendments based off public comments received.*

*The department recommends the commission adopt and transfer the administrative rules as proposed without any amendments. The department has provided a draft adoption notice with recommended responses to the comments received for the commission to consider based off this recommendation.*

Ken McDonald, Wildlife Division Administrator, greeted Commission. He stated that the Grizzly Bear Demographic Objectives proposal is presented to adopt administrative rule and demographic objectives that will guide management of grizzly population of the Northern Continental Divide Ecosystem when or if there is a delisting. The objectives are to maintain a well distributed grizzly population within the 16,000 square mile area that is the quarter recovery area, manage mortalities support 90 percent or better within the demographic area, and remain about 800 bears. To do that there would be limits on female mortality and would be managed to less than or equal to 10 percent and male mortality less than or equal to 15 percent. Comment have come up as to why 800 bears as we have 1000. In reality, to maintain 90 percent probability of ever going below 800 you are actually managing 1000 bears. The third objective is monitoring demographic and genetic conductivity among the populations. The objectives as part of the rule was endorsed by the Commission that initiated public comment process.

We started the comment process on August 24 that had a 60day comment period as well as public meetings on each in Kalispell, Great Falls, Conrad, and Missoula. There was a total of 190 people signed in at the meetings and 35 oral comments were taken. Also, during the 60-day comment period we received over 5200 written comments. These were all provided to the Commission. We had an NGO that had a website set up where you could enter your information and comment which generated a letter that was sent here. We had about 4,000 comments from that site. He comments were summarized into main issues and response comments and the notice of adoption in hopes that you received from the Commission Secretary. This will be filed with the Secretary of State if you agree to this rule.

The overwhelming majority of the comments received did not even address the rule. The comments focused mainly on not wanting to delist Grizzlies or hunt them or there are too many bears and so forth. Of the 5,200 comments, there were a small number that addressed the rule. After reviewing the comments and technical reviews, we did not find any substantial comments that regarded changing the proposed rule. We are recommending that the Commission adopt the rule as originally proposed. A point of fact, the NCDE Grizzlies are still listed under the Endangered Species Act regulations. Upon delisting, that rule would come into effect as the State had management authority. By adopting this rule, the Commission is agreeing to manage within the thresholds identified with in the rule. Thank you.

***Motion: Commissioner Brower moved and Vice Chairman Stuker seconded the commission adopt New Rule I pertaining to Grizzly Bear Demographic Objectives in the NCDE and transfer ARM 12.9.103 as proposed.***

Dagmar Riddle, Whitehall, stated that there has been a high mortality of Yellowstone grizzlies. They need a corridor to give diversity to the species. She feels that it is premature to delist them now. Grizzlies are finally moving into their historic grounds. They were previously forced into the mountains to live. Thank you.

Jonathan Matthews, Sierra Club of Montana, greeted the Commission. He stated the comments are their feelings about the proposed rule making process. We feel that it is premature right now to delist the bears considering the U.S. Fish and Wildlife Service delayed the delisting proposal that the court vacated. Dealing with only demographics the scope of the public comment opportunity regarding grizzly management in Montana is inadequate and should be expanded at the proper time in the future. This rule making should be withdrawn until then. As demonstrated over many years in the greater Northern Continental Divide and the Yellowstone ecosystems there is a strong public interest of the Montana grizzly populations in the lower 48 states. There are four out of the six grizzly recovery areas that are in the 1982 recovery plan that are partly in Montana that you as the Commission has a great responsibility to play in the role of recovering grizzlies throughout the greater Northern Rockies and Yellowstone regions. He hopes that the Commission realizes the importance that they play on a national level. He has brought copies of the comments that go into greater depth than the oral comments here.

He wanted to highlight a few things that are in the comments. There were numerous studies that a minimum viable population to ensure long term and demographic connectivity that is critical for long term consistence. Given the importance of the NCDE population to recover the species as a whole and that several thousand bears are necessary as a whole for the recovery of the bears. The population should be allowed to increase in number and broaden in range. Under the proposed rule language, the NCDE bears would be allowed to decline by 100-200 bears. We oppose any such decline.

Research by independent scientists is needed concerning a certain survival rate and mortality thresholds. FWP should develop genetic conductivity as well as demographic conductivity between the NCDE and Yellowstone grizzlies. No where in the proposed rule does it mention what methodology that FWP is using or how the outcomes would be calibrated. This was an issue with the delisting of the Yellowstone population. Sierra Club appreciates FWP's decision not to propose a grizzly trophy hunt in 2017. There are concerns about ARM 12-9-103 concerning sport hunting. It states in section (ii) Sport hunting is considered the most desirable method of balancing grizzly bear numbers with their available habitat, minimizing depredations against private property within or adjacent to grizzly bear habitat, and minimizing grizzly bear attacks on humans. Many nonlethal ways of minimizing depredation on private property in grizzly attacks are effective should be prioritized other than a sport hunt. FWP bear management specialists work hard to minimize conflicts. ARM 12-9-103 language should be revised to reflect that FWP will prioritize nonlethal methods and minimizing conflicts between people and bears. The Sierra Club urges FWP to withdraw the proposed ruling making and not sign the final NCDE Grizzly Bear Conservation Strategy until our concerns are fully addressed. Thank you.

Nick Gevoc, Montana Wildlife Federation, stated he attended the meetings in Conrad and Great Falls. He wanted to commend the FWP staff for the planning of the proposed rule. He agrees with much of what the previous speaker has said. The conflict reduction work that is being done on the front and Commissioner Stuker was familiar with some carcass pick up programs. Continue those and FWP does have additional staff for bear management people. We would strongly support that. As far as this rule, it is important that it applies to the demographic monitoring area. He thinks that it is scientifically sound and has plenty of safeguards for a robust population. Kudos to the Department for that. It's a good rule and I strongly support it.

Jim Straun, York, stated that his concern was the tagging process that will be implemented when we do get to harvest grizzlies. It is his understanding that it will be much like how the mountain lions are tagged as well as the quotas.

Chairman Vermillion stated that they have not gotten that far in the process.

Mr. Straun thanked the Commission. He feels that some of the direction has taken a nasty turn and has documented over the last 15 to 20 years how mountain lions have been harvested. He brought to the attention within 12 hours to the game wardens some photos. It is not just a one-time deal. Lions being removed from traps and tagged. He has

made the Department aware of this. He feels that the lion being caught and tagged this way is being accepted by the wardens. That is a concern. If we manage the bears like we did the Mountain lions then we have a bigger issue to address. Thank you.

### **Region 2- Missoula**

Mike Bader, Independent Consultant, Missoula, stated that he has a lot of experience with grizzly bears. He supports the comments that Jonathan Matthews made. He doesn't think that we are at recovery yet. Available science has found that several thousand bears are needed to provide viability. The best available science says that the five sub populations in the Northern Rockies must be linked. No habitat, no linkage to recovery. We can't depend on Canada anymore as there are more bears in the NCDE than there is in Canadian Province of Alberta. He wanted to summarize by saying that he hopes that the Commission will withdraw the ARM rule. He thinks the hunting provision was snuck in. The Department has not been very forthright with the public on the intent to have a hunt. It was de-emphasized in the rule. We read the rule and for its plain meaning. Please withdraw the ARM rule. Thank you.

Claudia Narcisco, Missoula, stated she supports the comments of Jonathan Matthews and Mike Bader. She feels the proposed rule should be withdrawn at this time for many reasons. The rule making is premature especially given the delay initiated by Christianson ruling. Some of the key issues that were raised have not been addressed such as the connectivity between the recovery areas is a key issue. It is essential to the recovery. She believes that the effect of delisting populations was not considered. The proposed rule does not address this adequately. This should be a reason to withdraw.

The NCDE is recognized as a critical source population need for connectivity to increased the number along the landscape. A minimum of 800 bears is not adequate. As Mr. Bader mentioned, the available science estimates a population of several thousand is needed. Population and conductivity are needed and related. This must be considered in that context. Delisting the NCDE population would jeopardize the conductivity of the NCDE and other areas. It's not like the GYD at this point or NCDE as well as the Cabinets and Yaak. The increasing importance is the Bitterroot ecosystem. This needs to be considered in a different context. What she understands from the demographic monitoring area is only the primary core area in zone 1. It doesn't extend across the landscape in a more comprehensive manner.

Ms. Narcisco stated that she has concerns about the hunting aspect that was put in that arm. She thinks that FWP should emphasize non-lethal measures to control predation and improve connectivity coexistence. There is nothing mentioned about this in the ARM. This is a big oversight. She feels that this is premature. Thank you.

Chairman Vermillion stated when it comes to grizzly bears, Montana FWP has done consistently good job. Bringing the grizzlies of the list and into State management will be good for the bears. People are concerned about it but, he thinks that the Department has shown itself to be very sound managers of large carnivores or predators like this. He has heard without exception from people who regularly interact with the Department on the issues what a good job the Department is doing. There is a lot of support for this rule. The biggest impediment to the grizzly bear populations in Montana isn't whether or not it is on the endangered species list. It is whether we can create an adequate degree of tolerance of grizzly bears on the landscape. Grizzlies are a very big thing to have to accept on your property. The Department is working hard and the NGOs are working hard to create that tolerance. When we do that bears become more secure. He hopes that will be the focus going forward as a Department and a community working on tolerance along the Marias or Fort Benton and places that bears are starting to show up. They don't last long when they do because they are getting ahead of the social acceptance of the bears and social tolerance. We really need to work on that. The more we try to create a safe place for bears to exist the better the bears will be long term. He thinks the Department is ideally suited to carry on the work and will continue to do so. The Department deserves a lot of credit for this rule. He supports getting on the books in preparation for delisting once the Federal Courts deem it appropriate.

*Motion passes 5-0*

***25. Petition to Repeal Big Horn Sheep license 330-10 and Amend Big Horn Sheep Conservation Strategy – Gallatin Wildlife Association***

*The commission approved opening HD 330 in the Greenhorn Mountains with 1 any-ram license at the February 15, 2018 Commission Meeting. Gallatin Wildlife Association submitted a petition to the commission to repeal the opening of this new bighorn sheep hunting district, HD 330 – Greenhorn Mountains with limited bighorn sheep license 330-10 (any ram), until the population reaches a sustainable level at or above the Department's minimum viable population of 125. The petition also requests to amend the 2010 Bighorn Sheep Conservation Strategy in accordance with the scientific record showing that managing for small, isolated populations is not an effective wildlife management strategy, with particular attention paid to what constitutes a minimum viable population and criteria for prescriptive harvest management on herds that fall under this minimum standard, and if necessary, initiate a new statewide bighorn sheep conservation strategy. The public has not had an opportunity to review or comment on the petition. If approved by the commission, rulemaking processes would be initiated that would include public involvement.*

*For each individual point of the petition, the Commission is required to either deny the petition or initiate rulemaking by statute (MCA 2-4-315). If the commission denies the petition on HD 330, the Greenhorn Mountains Bighorn Sheep license will remain as is, with 1 limited 330-10 license. If the Commission "initiates rulemaking" and because by statute, the regulations are not subject to rulemaking through the Montana Administrative Procedures Act (MAPA), the Commission would be required to rescind the regulation that created 1 ES license for HD 330 in the Greenhorn Mountains.*

*Separately, the Commission may either deny or initiate rulemaking about the Bighorn Sheep Conservation Strategy. If the commission denies the petition regarding the Strategy, it will remain as is. If the commission "initiates rulemaking," it must direct the department, through official action to revise the Strategy as outlined in the Petition.*

*Montana Fish, Wildlife and Parks appreciates GWA's long history and contemporary commitment to Montana's fish and wildlife conservation for today's public and into the future. This includes their lengthy involvement in bighorn sheep and their management. This said, FWP opposes both of the petition requests for the following reasons.*

*Per the current hunting season in HD 330, the department believes the hunting opportunity for one ram can be safely implemented without undue or long-standing harm to the population. This license type is typically filled on mature rams that have participated in multiple years of breeding, are nearing the end of their expected lifespan, and represent an extraordinarily high value to the successful permit applicant. Relative to process, the conservation strategy identifies criteria for hunted populations but it does not "preempt Commission authority to set hunting seasons" (2010 Montana Bighorn Sheep Conservation Strategy, page 4).*

*On the request to amend the 2010 Montana Bighorn Sheep Conservation Strategy, FWP believes the plan is contemporary and already emphasizes the priority of maintaining existing sheep populations—whatever their size. Further, ongoing research is driven by the agency's interest to secure and enhance bighorn sheep populations where possible.*

*For the above reasons, FWP recommends the commission deny both requests represented by this petition.*

Chairman Vermillion stated that he would let Ms. Riddle give testimony as she has to get back to Whitehall in time for work.

Dagmar Riddle, Whitehall, thanked the Commission for letting her give comment early. She stated that in units 316, wolf 926f was killed inside the town area. It is a safety issue. The hunter killed her on a road in town which is used by the Post Office and residents going back and forth to their cabins. She asks that this area be closed on an emergency basis because it is unsafe. She would like to have someone independent from the Department to investigate as the warden was a friend of the hunter that shot the wolf.

She was the most loved wolf. Everyone comes to see her. She has gotten reactions from around the world even in Germany. They are so sad and angry about what happened to the wolf. She advised that she has 50 emails that were received last night. The other adults in the pack are now being targeted. It is a pack of three adults and five pups. The wolf has been through so much. She has lost most of her pack, her mates, and pups for the last three years. She has one daughter left and they are targeting her. Shooting the wolf in town is wrong. People in that area that sympathize

with the wolf are being threatened. There is a serious safety issue there. The white lady was another one. People would come to watch the two wolves. She was killed inside the Park borders.

The Park borders end at the doors of the businesses on Park Street. The wolf was shot on the inside boundary of Yellowstone. The areas of 313 and 316 need to be shut down for safety reasons. Not just for wolves but, for all wildlife. The borders should be moved outside of the towns. The borders are causing a safety issue for the people in town. It is also an economic issue. The wolves bring in a lot of tourist dollars. There have been four million visitors at Yellowstone Park. We are trying to educate people about having a no hunt zone around the perimeter of the Park. She knows that the Legislature must be addressed on this issue. There is a certain amount of safety and economics concerns surrounding the wolves. People come from all over to watch the wolves. We are all devastated about what is happening to them. This is an economic issue and a safety issue. This is getting out of hand and the wolf populations are dwindling.

The park wolves always seem to be targeted. There is a lot of money and research put into the wolves. We are learning so much about them. The wolves do not know the political borders that we have put on them. Thank you.

Chairman Vermillion advised that they were now going to start the Bighorn Sheep Petition.

Becky Dockter, Chief Legal Counsel, stated that statute 2-4-315 allow for individuals to petition for rule making. You have seen these before. They have come with more restrictions on water bodies. There were other in recent past that were for hunting regulations as well. This petition is submitted by the Gallatin Valley Wildlife Association. It has two substance matters 1.) requests that the Commission rescind the opening of the hunting district 330 that was passed in February of 2018 to allow one any ram license. 2.) to amend the 2010 Bighorn Sheep Strategy. In accordance with science and scientific record for managing small bighorn sheep populations. She will allow Mr. Hockett to read what the petition actually says. There has been no public process to date on this. You would be required to take public comment on your actions here today.

Your authority and requirement for acting on this petition is to either initiate rule making or deny the petition. If you determine to initiate rule making on either one of the circumstances, they would not have to go through administrative rule making. You could make the rule here today with a motion. She has provided some guidance on a proposed motion on your cover sheet. Each of the matters should be taken separately. The hunting district 330 separately and a motion to determine your action on that. It should say "and" and not "or" on that one. The Bighorn Conservation Strategy either deny or initiate rulemaking on that. If you would deny rule making in the hunting district it would remain as is which is to issue the one ram license in hunting district 330. If you would deny the petition for the Bighorn Sheep Conservation Strategy, it too would remain as is.

The question on hunting district 330 and whether you would initiate rulemaking; you would then have to rescind the previous hunting district 330 regulation in particular if you would decide to initiate rulemaking. The Bighorn Sheep Conservation Strategy would be directing the Department by your approval of this to amend the conservation strategy as proposed by the petition itself. She won't go into the agency information or rationale. She would suggest that the petitioner be allowed some time to present the petition and then the Department have time to present its response or position on the petition. Any questions?

Chairman Vermillion, stated that they would start with Mr. Hockett and then if the Department wants to add a few things afterward, feel free. After the presentation, we will open for public comment.

Glenn Hockett, Gallatin Wildlife Association, stated he would like to talk a little bit about his organization. We are a volunteer nonprofit wildlife organization made up of dedicated hunters, anglers, and other wildlife advocates in southwest Montana and elsewhere. Our mission is to protect habitat for fish and wildlife for future generations. We also support Montana's constitution which states, "The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state and does not create a right to trespass on private property or diminution of other private rights." And "the Legislature shall provide adequate remedies to prevent unreasonable depletion of natural resources". He serves as the volunteer President of the Gallatin Wildlife Association and is thankful for this opportunity today to express some of our concerns about bighorn sheep. Quite frankly, we knew of no other way to do this.

We have been working with Chairman Vermillion and others for years about some of the concerns. So, he hopes that it appreciated that they found there is no other way to get his on the table. He doesn't want to down play the great work that has been done for years regarding the bighorn sheep. He wants everyone to know how much they appreciate that. Many before us have helped carve out a platform for the sheep recovery and conservation as well as the pioneering of new ideas. Many of the folks are here in this room or listening in today and would like to thank them very much. While we may disagree on some things today, he believes that we are pushing in the best ways that we know how to further advance the recovery and conservation of bighorn sheep.

He would like to focus on some contradictions that have confused us and frustrated us. Our goal is not to point fingers but, to help the Department and the Commission to find and implement solutions for bighorn sheep and their habitat. He wasn't sure if there were two or three aspects to this so, he'll call it three. As Ms. Dockter mentioned, the first is to repeal the hunt of the Greenhorn bighorn sheep herd within hunting district 330. The second is to review the conservation strategy that really has two parts. The first part is that we would suggest reviewing and amend the criteria used to establish the bighorn hunt. Currently, the criteria would allow the hunting in a group of 16 animals. We think that is flawed. The second thing is that we have been worried about for a number of years is the question of 125 animals is sufficient for a viable population of bighorn sheep. We would request an independent review and amend the conservation strategy accordingly.

So, the first thing of repealing the hunt. the Commission approved a hunt for a herd of bighorn sheep that was observed at 59, 46, 42, and now 41 animals in the last four years. How did that happen? It is in his opinion that god biologists made a bad recommendation based on faulty criteria. We are not pointing any fingers here but, the criteria is flawed. There are four criteria outlined in the strategy on page 222 of the bighorn sheep strategy. He has provided some of this to Director Williams and Chairman Vermillion. It says that if three of the four criteria are met for three consecutive years a hunt can be recommended. The criteria are the population be at least 75 observable sheep, 30 rams per 100 ewes, 30 percent of the rams have three quarter curl, and 30 lambs per 100 ewes. The last three criteria were met in terms of the Greenhorn herd. The first one was not. At least 75 bighorns have not been observed in the last three years. The counts were 59, 46, 42, and now 41. A research paper cited by the FWP the last work session and three of you were there. This was a paper from 1990. That paper found that 100 percent of the bighorn populations were reviewed with less than 50 individuals, went extinct within 50 years. Those with 51 to 100 animals perished after 60 years.

It is confusing to us as to why we have chosen to hunt a population that is less than 41 observed bighorns that are likely in an extinction vortex. They are facing rapid risk of extinction according to research cited by FWP. We feel the hunt should be put on hold. Is hunting such a small herd appropriate? This should be critically reviewed, amended, and approved.

Regarding the hunt criteria that is used to see if hunting is appropriate, allows for the recommendation to hunt a bighorn herd of 16 animals. So, 10 ewes, three lambs, and three rams with one being a three-quarter curl. This could allow for a hunt. Something is wrong with that. That should be looked at and amended. Now for the most important thing, 125 animals are represented as a viable population. The best available science says no. he cited a paper "Trail at All 2010". It critically reviewed population size requirements for a variety of species based on empirical and theoretical assessments made over that last few decades. This literature collectively shows that thousands not hundreds of individuals are required for a population to have an acceptable probability of riding out environmental fluctuations and catastrophic events. This research estimates that a population of over 1000 animals if necessary to ensure a greater than 90 percent probability then the population will exist for another 100 years. That is not unreasonable. He would like to be able to see bighorn sheep 100 years from now.

A population of 125 individuals is estimated to only have a 50 percent probability of surviving 10 years. There are herds that have survived longer than that. This is some of the best available science. When you are down that low we are in trouble. Here are some undisputed facts. FWP can correct me if I make any mistakes. This comes from the 2010 Montana Bighorn Sheep Strategy. At the time FWP listed six populations which are listed on pages 82 and 83 of the strategy. Population objectives were also listed. Eighty-three percent of the populations and 70 percent of the herds have objectives for less than or equal to 200 animals. Only eight populations have greater than 200. Amazingly, only 21 of the populations or 46 percent of the herds have objectives of less than or equal to 125 animals. That is 46 percent of the herds with objectives of less than or equal to 46 percent of the animals. The highest objective in the state is 425

in hunting district 680 Choteau, Blaine and Philips counties. There are no objectives for establishing even one population of a 1000 or more connected animals. We have no population that meets the requirements of the best available science. There is no objective to even get there. That is a problem that he thinks warrants an independent review.

It is confusing to us that science says that thousands not hundreds of animals are necessary to ensure long term survival. In most cases we are managing small isolated groups of less than 200 animals. The population estimates are also included in the strategy. There were 35 populations in 2010 or 76 percent of the herds had less than 200 animals. Only 11 populations or 24 percent of the herds were greater than or equal to 200 animals. Moving on to 2014 things have not gotten better. This comes from data that the Wild Sheep Foundation put together in their spring newsletter. This was 2015 but, the data comes from 2014. They listed 43 total populations at the time that were managed by FWP. Only seven of the populations or 16 percent of the total are greater than the 200 animals. Thirty-six of the populations or 84 percent of the herds were less than 200 animals. So why is this talk about herds managed for 200 or less animals important?

There are genetic issues. This comes from the conservation strategy from pages 57 and 58. Primarily page 57. The strategy mentions that isolated populations 200 or fewer individuals will likely suffer loss of genetic variation and an accumulation of inbreeding and genetic loss determined by inbreeding. A breeding structure where few males dominate effective population is only census population. A population of bighorns with 200 or fewer animals, the effective population is likely 20 or fewer animals. That's the majority of our herds and the majority of our objectives for many of Montana's bighorn sheep. Big horn sheep populations are small and isolated. They were founded with few individuals. Because of the small founding sizes and low abundance many are likely 10 percent of the viable population. With 200 or fewer animals there is likely 20 or fewer animals that are effective. This makes them susceptible to fewer genetic variations, inbreeding and the random increase of harmful genetic variation. The loss of genetic variation, a variance or alleles is expected to reduce adaptability and the susceptibility to certain parasites, diseases, and other things. Because of the small population sizes and isolation over time the amount of inbreeding will increase and result in inbreeding depression and fitness in the inbred individuals. His all comes from the conservation strategy.

He will now cite a paper and does not know how to pronounce the name of the author. This paper was written in 2011 that was regarding inbreeding having a significant effect female lamb survival. It shouldn't surprise us that we have trouble with recruitment of the small isolated populations especially if they have had a disease event. Inbreeding makes a difference. This is particularly true for females. Other small population effects are disease, predation, lack of recruitment, and environment can be contributing factors. All the factors act concurrently to the very risk of extinction. This is citing the plan itself. To summarize, there are contradictions that are needing to be addressed. The best available science says that hundreds of individuals are needed to establish a viable population for the long term. The plan claims that 125 is a minimum viable population. This is confusing to us and probably to the public.

Furthermore, the plan outlines that 46 percent of the bighorn herds are to be managed to objectives of less than or equal to 125 animals. He thinks that is worth an independent review. The plan notes that a herd of 200 or less are not genetically adequate and will likely suffer from inbreeding within two or three generations. This is about 15 years. The plans have 83 percent objectives for populations less than or equal to 200 animals. We are prescribing management to endure that we have genetic issues with inbreeding within 15 years. Finally, the Commission has authorized a hunt for a herd that has dwindled from 59, 46, 42, and now 41 over the last four years. The science cited by the FWP and the Berger paper 1990 says that herds below a hundred face extinction and anything below 50 is slated for extinction. The criteria used to justify this hunt would allow a hunt for a population as low as 16 animals. That should be looked at. These contradictions are confusing at best. The Greenhorn hunt if not repealed should be explained. Tell us what the purpose is. He believes in hunting opportunity but, at some point there needs to caution. The herd is at extinction vortex by the research cited by the Department.

With less than 50 observed animals, the population is at extinction vortex. The rapid extinction for this herd is real and should be addressed. This herd needs to grow and expand. It needs to be considered even in the short term. An independent review of the criteria used to determine the viability of bighorn sheep should be determined. The current criteria will allow the hunting of a herd that has only 16 animals. An independent review of a herd of 125 or even 200

bighorn sheep managed in isolation warrants a viable population in the long run. The best available science some of which we presented today. There is more if you want to see it. A connected population of at least a thousand animals is necessary to ensure long term viability. Conductivity comes with risks and so does isolation.

The status quo of managing small isolated populations will not work long term. The 2010 conservation strategy can be improved. More bighorns have not made their way back to that mountain since that plan was written. If we do not address this issue now, then when? The conservation strategy that ensures genetically adequate bighorn populations that are resilient to stressors and allowed to thrive long term. An approach to the constitutional right to harvest game for perpetuity. Thank you for your time and attention. He appreciates it. Thank you.

Chairman Vermillion stated that is not the time for general public comment. He advised that we are still addressing the Bighorn Sheep petition. He stated that this was the time for FWP to comment on the presentation.

John Vore, Game Management Bureau Chief, Wildlife Division, stated many things the Mr. Hockett referred to have been covered in the November 15 Work Session. Everyone that is interested in bighorn sheep would like to have thousands of bighorn sheep in Montana. We would like to have connected and genetically connected populations. The real situation on the ground does not put us in that position. We do not have the disease issues figured out that we spoke to at the November meeting. We have been managing for many years as Mr. Hockett pointed out. We are very concerned, and we know from experience that the populations exceed a certain point where there is very high risk for disease. This is why we have the population objectives that we do so we do not have to deal with these kinds of issues.

We know from research that FWP supported that when we get to high population density there is a very real risk of disease outbreak. We want to avoid that. Moreover, we want to avoid any of the connection parts that we are talking about where we might have sheep domestic or wild act as vectors of diseases. That is a real concern for us. As far as the genetic isolation, the things that Mr. Hockett was speaking to assumed that the populations are all isolated and have no contact with other bighorn sheep either naturally or management-wise. That is not the case in Montana right now.

We know from the sheep that we had marked in one way or another as was talked about previously about disease outbreaks that were going from one population to another. These populations are probably not isolated as would be the case about an extinction vortex. That would mean a totally isolated herd and that does not seem to be the case. The work that was done by Allendorf in the 1990s shows that was not the case. We don't think that is an issue for us. If this becomes an issue, we can certainly move a ram or two every three or four generations. That would take care of it. As was mentioned in November, we had a case in Wild Horse Island that had a population that produced the world record ram. This is not the only metric that we use for a genetically viable population. We not seeing any shrinking of the rams or the size of the animals there. We don't think that the genetic component that was spoken to needs to be brought up. It is also one that is readily available to take care of expediently if we need to. These are not totally isolated populations as that would be the case. We need to be cognizant of on the ground of what kind of population will the range support. What kind of population can we have socially. All things need to be taken into consideration. We and all that are interested in bighorn management would like to see more sheep on the landscape.

Until we can get the disease issue figured out or some way to mitigate it, Montana is not blessed with a lot of bighorn sheep on the landscape that Wyoming is. It was cited many times that they had thousands of sheep. We are not blessed with that. It is not something that Wyoming did different than we did. It's just that they were blessed with that to begin with. He would answer any questions.

Chairman Vermillion said that they would take public comment before they make a motion.

Jim Bailey, Gallatin Valley Wildlife Association, stated it must be confusing with all the numbers that you hear. The number of 125 population is viable for bighorn sheep. He read recently that 1,000 bison were a genetically suitable population. We even heard today the we need thousands of grizzly bears for a viable population. Where do these numbers come from? Why do they sound so contradictory? He would like to shed some light on that. His comments are relative to Gallatin wildlife's proposal regarding the question of 125. They are relevant to other species and many populations in our every growing and developing state.

His comments are going to be limited to genetics. There are other small population effects that he addresses on his website and he is not going to deal with those. There are three negative processes of herd genetics that result in greater problems as they become smaller. There is inbreeding, and the organization of the herds makeup also known as the genome of the herd and permanent loss of types of genes and alleles from the herd. As we go from one to three, inbreeding, disorganization, and loss of alleles the negative general affects occur more slowly. They are less detectable. The negative effects require a larger population to alleviate the problem. Let's look at the three things. The permanent loss of alleles and animals have several thousand genes that affect its anatomy and physiology in many ways. This can affect physical form, genetics, birthweights and so forth. Almost all of these genes are represented in a population by variances. This can be up to ten variances. The variances are distributed across the animals. They have different affects on the genetics of the herd and how the genes operate. Since there several variances for each gene which can be thousands of variances.

There is a process called genetic drift. This is when random factors that determine which alleles are passed on to the animal from generation to generation. Randomness occurs in all populations and starts with the splitting of the chromosomes when reproduced. This becomes more prominent when passing alleles across generations. This is more prominent when coming to natural selection. This causes a slow loss of alleles from the genome. The rate of loss increases when population size decreases. A computer modeling exercise demonstrated the population of bison that varied between 1,000 and 2,000 animals. It was estimated that they would lose five percent of the alleles each 100 years. Five percent is not a big number. We don't know what alleles do or how they operate. It is an important issue when you are losing genetic diversity. This diversity allows the population to adapt to future environments. It is all the things that natural selection has to work with. It is like a painter painting a picture. If there are only a few colors on the palette then the picture is limited. If there are more colors, then there is more variety.

The loss of diversity lessens the chance of adapting to the environment. We all know that the environments are changing especially with climate change.

Chairman Vermillion reminded Mr. Bailey that was three minutes.

Mr. Bailey advised he would wrap it up. He stated that the Commission would have to read the rest of this. The long-term view is that we need thousands of animals for adapting to the future. We need several hundred animals which is the misterm view for maintain adaptiveness to avoid inbreeding affects. He feels the Commission is responsible for this and be careful what you leave. Thank you.

Nick Gevoc, Montana Wildlife Federation, stated he understands the Gallatin Wildlife Associations concern about the sheep, the management, and the frustrations they have. We need to look at the sheep plan to see what is and isn't working. Several of his board members are retired from the Agency. A while back, biologists were asked to identify sites for transplants. We have seen several of these proposed and for some reason we have a hard time moving sheep. We know the Tendoy's need to be addressed. He believes that is up next year.

Lima Peaks and Lewis and Clark Caverns are other places. He remembers when that was good habitat. The Bridgers by Livingston and the Centennials are just some place that are ideas that could be brought up. Let's take a look at what is working and what is not. We do share the frustration.

Chairman Vermillion added they do as well.

Jim Brown, Montana Wool Growers Association, stated for a couple of weeks he decided whether or not to speak at this meeting. You can look at the bighorn sheep management in Montana as the glass half empty or the glass half full. He thinks this guides the question before you today. He did some quick research and thinks the research falls under the glass half full. This is shown by a couple of statistics. The number of bighorns tags in 2014 was 450 that were awarded. We can compare that to 1994 when only 125 tags were awarded. As of 2016 there were more than 5,000 sheep in the State compared to the 1940s when there were less than 1,000. So, there is success in growth and numbers in terms of hunting opportunity lends itself to demonstrate the success of Montana FWP bighorn sheep management. With that context, he feels that Mr. Hockett's presentation is omitting some things that are relevant.

This is not just a numbers game in Montana. There is evidence throughout the bighorn sheep strategy. He quotes page 222 "Strategies to manage bighorn sheep population are based in part on how bighorn populations respond to

demographically within five ecological regions within Montana. Bighorn populations and objectives for the various populations as well as monitoring programs across Montana depend largely on environment and the ecological region in which they occur". It goes on to talk about the Greenhorn herd which you have been asked to repeal the tag. The population objective for that herd was derived by the ability of public lands to provide forage for the majority wintering bighorn population and landowner tolerance for sheep that winter on private land.

What this tells you is that this is just not a number game for Montana bighorn sheep management. The success of bighorn populations is dependent on as it has been identified in the plan on ecological and social reasons. This why he thinks that the petition should be rejected. It is an incomplete proposal and it doesn't ask to take a comprehensive look at entire plan piece meals. He feels because of this it is flawed. I am sure that you have read the Bozeman Chronicle Gallatin Wildlife is in the middle of a federal lawsuit against the U.S. Forest Service that involves the management of the Greenhorn herd. One of the allegations dealt with whether the herd was huntable. It is interesting that in the midst of litigation that Gallatin Wildlife Association comes to you and asks for a change in whether the herd is huntable.

He advises the Commission not to weigh in when there is ongoing litigation involving the bighorn herd. He would echo what Mr. Gevock stated. The Montana Woolgrowers Association has a stake in bighorn sheep management as anyone in the state. Our grazing allotments are an issue in that litigation. We have a vested interest in working with you and the Department for sound bighorn sheep science because it benefits you and us. It is a negative game if we do not work together. We have supported projects in the past for reintroduction in areas of Montana. We supported the Bridger reintroduction. He thinks that it is a better path forward if the Commission rejects this proposal which seeks to overturn the conservation strategy and moves forward to implementing the strategy looking for places to reintroduce those herds. This would be compatible with the ecological and environmental factors that support growth. He encourages the Commission not to adopt the proposal. Let's stay on a positive path forward.

### **Region 3- Bozeman**

Joh Meyer, Cottonwood Environmental Law Center, stated he started the law center to give biologists a voice. If you look at page 220 of the bighorn sheep strategy, says "Issues with bighorn sheep management in his area (referring to the Greenhorn Mountains) all amount to wild and domestic sheep conflicts ". He thinks that Mr. Vore with the Department of Livestock hit the nail on the head when he talked about domestic sheep conflict. In 2001 FWP put out a decision notice to reintroduce bighorn sheep into the Greenhorn Mountains. As part of that decision notice FWP said that they would reintroduce sheep into the Gravelly Mountains if domestic sheep were not grazed there. As the Sheep grower attorney just mentioned there is a federal law suit right now to remove the domestic sheep from the Gravelly Mountains. He understands wanting to play nice in the sandbox but, The Commission is Fish, Wildlife and Parks not the Department of Livestock.

If you are telling the public that everything is just fine with domestic sheep management in Gravelly Mountains, then he asks that the Commission take a long hard look at the whole picture. In 1900 there were over a 100,000-bighorn sheep in the state of Montana. Today there are fewer than 6,000. The reason we don't have as much bighorn sheep is because of domestic sheep. We cannot let private individuals privatize our public land and make a profit. Because of this we don't have public hunting grounds, we don't have grizzly bears. We have all kinds of animals being preyed upon because there are preying on the domestic sheep. Mr. Hockett has a bighorn sheep head mounted on his wall. He has seen and looked at it. It is an amazing mount. He would love to have one of those someday. There is a mountain in the Gravellys called Bighorn Mountain. He would like to see bighorn sheep placed back on Bighorn Mountain. It seems like a good place to reintroduce the sheep.

We need FWP to step up for bighorn sheep and maybe right now is not the right time to hunt. We should wait a bit longer to ensure the population is moving in the right direction. In the Conservation strategy on page 221, "Given the low level of the population at this time, the propensity management actions in the population objective. It is not likely that hunting is expected to occur prior to the population reaching an observed level of at least 125 animals". We just heard there are 50 animals for a proposed hunt. This doesn't make sense. It doesn't make sense to a lot of people. We are asking you to do the right thing for wildlife. Maybe that means that we need to hold off on a hunt for a while. Ultimately, I think we are all going to benefit from all that. Thank you.

Chairman Vermillion stated that before there is a motion that he wanted to reference a letter from the Montana Wild Sheep Foundation. This letter was submitted by Brian Solan and Kurt Alt. we will enter it in the record. They are opposed to the proposed motion requests.

***Motion for Bighorn Sheep Strategy: Vice Chairman Stuker moved and Commissioner Brower seconded the commission deny the petition requesting amendments to the 2010 Bighorn Sheep Conservation Strategy.***

***Motion passes 5-0***

Commissioner Colton stated that he very sympathetic with Gallatin Wildlife Association's position. The plan almost seemed antiquated before it even hit our table for approval. It would be difficult to implement as we experienced. He appreciates the advocacy on this issue. Frankly, he would like to go back and get rid of that license and reopen up the plan. This isn't the process for doing that. It would be no different if it were the elk management plan or elk hunting district 411 when an organization makes a petition on that. It sets a dangerous precedent. If there were anytime to do it, it would be here. He apologizes to the gentlemen who have been supportive of this agency over the years. He is hoping that we can work on things down the road to work on this problem. What we have said about the Greenhorns and the inability to find places for relocations of the bighorns and since the time he has been on the Commission he doesn't think there has been any conversations.

Chairman Vermillion stated regarding MR. Hockett and Mr. Bailey, he apologizes that Mr. Bailey did not get to give a full talk. It is common sense and he thinks that anybody, rancher, sheep farmer or biologist knows that with genetic diversity comes long term stability for any species. He thinks there is very little question about having small herds does affect land productivity. It certainly affects the long-term survival and genetic diversity of a herd. He doesn't think biologists would disagree with that. Where we struggle is the number of 125. There are some structural barriers that we face and political barriers that face out there. You cannot impose sheep where the statutes by the Montana Legislature don't allow us to do that.

The Commission and FWP are working to accomplish as much as it can to come up with something according to what they have to work with. There were a lot more sheep in Montana at one time and hopefully someday there will be more. There are few issues where it is tremendously frustrating year after year. When Mr. Brown says that he prefers to look at this as the glass half full. There is certainly progress that has been made in certain areas if you go back in time. He and Commissioner Colton has been on the Commission a long time and FWP has not had a successful translocation or movement of sheep. Literally every year that he has been on the Commission he has asked where we are going with bighorn sheep. Every year he goes back to Mr. Hockett and says that we are doing our best. We are not getting anywhere to speak of. This includes translocations. But, it is not because the Department doesn't want it to succeed. Anyone who is working in this landscape because they love wildlife biology. People are members of Associations for the same reason.

We do have a common goal here. We need to change a lot of different things on the landscape. There are things that we do not have control over. The only way that we can have linkage between our herds is by moving sheep around manually by people. It's maybe a short-term solution but, long term it is not a very viable solution. We need to make sure that we stay on track and continue to work forward on this. There is a number of things that have changed in the way that we manage sheep. There are things that we can do as an agency but, some things where we do not have the authority.

He agrees with Commissioner Colton on this. Isolation will eventually create decreased populations. We might be able to stave that off for awhile by moving sheep. For example, grizzly bears. Some say that 1,000 is too many. Some say that is not enough. We are still dealing with populations that don't have a lot of link that are much smaller. We know that there is work to do. The Farm Bill that is passing is reauthorizing and re-supporting for the sheep station. That is not a great example of moving forward and we need to find solutions with the wool growers, wild sheep advocates, and doesn't involve sportsman. We need to work together with the agencies whether federal or state. This really going need to be a group effort.

He has been told in the past that internal species committees with biologists that came together to try to restore sheep and the bottle necks that prevent species from thriving. He feels that it's time to do something with the bighorn sheep.

He thinks that someone at the state level could oversee a committee like that and work with the biologists who have good relationships with the landowners and the sportsman. This is something that we could start working on. We really do need to do something. This has been a frustration for some time. He doesn't think that it has gotten any better. Probably has not gotten a whole lot worse to tip the population in the Greenhorns.

When it comes to the sheep plan he thinks that there are some real issues that need to be worked on. He thinks that they need to be worked on with the different stake holder here today. He hopes that the Department can find a way going forward to get the help that the sheep deserve. Next is the motion for the hunt in the Greenhorns.

***Commissioner Brower moved, and Commissioner Aldrich seconded I move the commission deny the petition submitted by Gallatin Wildlife Association requesting to repeal the opening of HD 330 Greenhorn Mountains with 1 Bighorn Sheep License 330-10.***

Vice Chairman Stuker stated even though his was brought forward he has to support it. At the season setting in December, he very easily supports that this be eliminated at that time and the recommendations that come with it. In this manner he will support the motion.

***Motion passes 5-0***

#### ***26. Public Comment for Issues not on the Agenda***

Chairman Vermillion stated that this is the time for public comment for items not on the agenda. Comments will be limited to three minutes per person. The wolf comments are not an agenda item. The closing of the wolf hunting will not be addressed today.

Cheryl Chicerelli, Business owner, Silvergate, stated on Saturday November 24, 2018 a hunter shot and killed an animal within her community. She was outside with her husband playing with their dogs when they heard the gunshot. It was way too close. The community of Silvergate is concerned because this has raised a serious safety issue. She is here today for two reasons. 1.) to create a safe no hunt zone around the community and properly investigate the killing of the wolf to publish the results publicly. The residents of Silvergate are appalled that this was allowed to happen within the community. We are requesting that FWP designate a no hunt safety zone for the immediate community of Silvergate. We are concerned over the safety of residents, pets, and tourists that visit year-round. We never imagined not feeling safe in our community.

She and her husband has grown up around hunting. They were taught to respect guns, hunting and especially where you are shooting. In the immediate Silvergate community, cabins and businesses can be within 100 feet of each other as well as publicly traveled roads. The area where the hunter fired his weapon and killed animal is used year-round by the community for snowmobiling, hiking, walking pets, and travel back forth to cabins. Anyone could have been injured as a result. We do not want to take hunting grounds away but, we want to protect the people in our community whether residents or tourists. We have millions of acres all around the community that hunters can use. We are only asking for a few square miles where we live, work, and play for a safe zone. There is the excuse that Silvergate is unincorporated. That is true. Gardener is unincorporated, but they do have a no hunt zone in place. So, we are asking for the same consideration. 2.) the incident discussed previously has become a nationwide topic. As a result, threats have been made against businesses and me personally. My Facebook page has been hacked. Boycott threats have been made against Silvergate and Cooke City businesses who do and do not support wildlife. Our community has been turned upside down with neighbors against neighbors. The communities of Silvergate and Cooke City have become divided. Our communities have heard the hunter took the wolf while in the woods. We have also heard the game warden says the animal was taken on private property. Several of us have been back to the Bannock Trail in hopes for some explanation. We have not been able to find any signs of drag marks to indicate the animals was drug from the woods. There were no other bloodspots other than what was found in the middle of the Bannock Trail. We also believe that there was a phone call made from the landowner to the hunter to seek out the wolf. Our cabin sits very near the landowner. The gunshot was too close to our home. The shot location matches the bloodspot in the middle of the road. This area is littered with cabins. She stated that she has a map that she showed the Commission. There are residents and visitors in the cabins. The road is maintained road for vehicular travel by the residents. Current law indicates that to hunt on the road to be unlawful.

Since this case is so high profile and a threat to all in the community, we would like insurance that it will be investigated properly and without bias. If the investigation was done fully, you would have a picture of the original kill spot. We believe it to be in the best public interest to make this public knowledge to the Silvergate community, ethical hunters, and the nationwide community. Please create a no hunt zone around our community and properly investigate the hunt that took place. Please also let the public know the results. We know the area is closed to moose hunting. So why is it just moose? Why can't it be extended to all animals to our community? Thank you.

Linda Sandman, Clancy, stated she is a Montana native born and raised Livingston. She was lucky enough to grow up with Yellowstone Park in her back yard. She also grew up hunting a variety of animals. She feels that she represents many Montanans that do not except the gunning down of a habituated iconic Yellowstone wolf as hunting. She is a typical Montanan that thinks decisions about wildlife should be made by biologists and scientists not politicians. Last year she took her family on a three-day winter trip through Yellowstone. Our primary objective was to see wolves in the park. We had the unforgettable experience of see the Junction Butte Pack with a wildlife biologist as they scampered across the valley floor. She heard the howl of the wolf for the first time.

These are experiences that She shares with other wildlife watchers who outnumber hunters three to one. We have spent thousands on lodging and meals as well as guide fees just for the opportunity to see and photograph wildlife. What did this hunter spend to kill Spitfire? Twenty dollars? What do you think happens to watchers when wildlife numbers fall? Idaho reports show a 45 percent increase in wildlife watchers which means a big cash infusion when wolf kills were banned. Wolves are worth so more alive than dead. They are a big draw to park visitors. You could be using the wolves as a tool against chronic wasting disease. These wolves are National Park wolves. They were born in the Park and have had the protection of the Park. They have become habituated and do not see people as a threat. The wolves were not causing problems. They were not in conflict with humans or livestock. The wolves belong to the Park. They are the people's wolves. They deserve special protection. Their only mistake was crossing oven an invisible line.

People have lost the ability to see spitfire, photograph her or her howl. The pack will be devastated from losing the alpha female. This wolf was more than letters and numbers. She was the petite spitfire the descendant of one of the most famous wolves in the wolf of the Lamar Wolf Pack. This Pack also came to the same tragic end because of trophy hunters. She urges the commission to institute a no hunt zone around the Park Boundary. She urges the Commission to close hunting in the area around Silvergate and Cooke City to protect the residents and wolves. She asks the Commission to launch an independent investigation by someone who had no connection with the hunter. This hunt has notoriety. It has the attention of Montanans and everyone across the nation even internationally. People want answers and assurances that a thorough and transparent investigation was conducted. These wolves need your protection. Thank you.

Gerald Butcher, Great Falls, stated that he has property at Gates of the Mountain in Lake Shore Homes. They have a real problem in their area with guides and the number of guides fishing below Hauser Dam to the Gates of the Mountains. He has written each of the Commissioners a letter so they understand his concerns. He hopes that they will take into consideration the problems there and hopefully work together for something to be done. Thank you.

Chairman Vermillion stated that they did get the letter as well as several others. The American Bar Homeowners Association has sent many comments as well.

Jim Kehr, American Bar Homeowners Association, stated he has fished the Missouri River since 1974. Especially in the Beaver Creek area. my personal experience is that the fishery quality has dropped about 50 percent. We have not caught a brown trout in over two years. He typically fishes with his grandsons and even they are amazed with the amount of boats that are up there. It has gotten totally out of hand. There are so many guided boats that is hard to get up the river. They have driven by him and threw wakes at him. His biggest concern is that when they go home at night they come right by our docks wide open and throw wakes about 20 yards from the shore. He would like to have a no wake zone implemented. This is a concern for public safety at least get them 50 yards out. He would also like FWP to look at the fishery and see what is happening to it. It was a blue-ribbon fishery. There are many places they can fish in the reservoir. Why do they have to fish right there? Thank you.

Brian McCullough, Helena, stated that he would like to support FWP and their responsible management of wolves through the biologists. He hunted around Yellowstone park when the elk were up to 15,000 to

18,000. The wolves were a major player in bringing the population down. The population of elk was out of control. He feels the wolves have contributed in a positive way to moving the habitat around in Yellowstone. This has been a good thing to reduce the impact when the elk drop into an area. They tend to stay there for a time and trash the habitat. The population has been brought down to a level that is manageable.

Wolves if out of control can decimate a population. He has seen this in Alaska with the Dell sheep population. That is why for a long time Alaska did not allow aerial hunting of wolves. This was adjusted over time as the wolves were not keeping populations in check. It is responsible management to provide the opportunity as well as the habitat and other animals for a certain amount of harvesting opportunity to keep the population in check. The biologists are the experts to perform that service. Thank you.

Margaret Thompson, Gardner, stated she has a letter from a friend in New York, Diane Fentanina, that she wanted to read to the Commission. The letter states that Diane visits Montana frequently and feels that she feels a connection to all Montanans because of my wildlife viewing experiences while there. Last year I hosted a family of six. My nieces and nephews came from October 15 through the 25 of 2015. We stayed in Gardner outside of the park and enjoyed five straight days of wildlife watching. Wolves were at the top of our list.

All costs including guide fees as well as food and lodging came to \$10,000.00. Visiting Montana is a significant investment for people. It has been a privilege for them to support the Park. All the businesses in the gateway community of Gardner carries value. As the result of the news that I have heard about the killing of 926F, I have paused in planning for my next trip. She saw a survey that said roughly five percent of Americans 16 years and older hunt. Roughly 50 percent of those that hunted 50 years ago will accelerate.

Conservation laws were developed in the 1930s to help control hunting. Little attention was given that animals have an intrinsic first and essential to biometric diversity. The game and non-game animals are need for a balanced ecosystem. Montana Fish, Wildlife and Parks as well as other wildlife agencies in charge of conserving all wildlife, are funded almost exclusively by hunter license fees. This justifies the sale of guns, ammunition and archery equipment. It is evident at the heart of all conservation policies is for the hunting and gun buying public. The interest of the new generation of Americans like me, value the ecological importance of all wildlife is undeniably ignored.

While hunting is a seasonal activity, all wildlife tourists that provide Montana with a much more reliable source of revenue. We compromise a broader base of resident and nonresident consumers who are ready to help fund state wildlife agencies. It is clear that wolves are worth more alive than dead. The government is supposed to hold wildlife in trust. It implies that we all hold an equal share in wildlife. She would like to take this time to air her concerns about the future in wildlife watching of Yellowstone's wolves. She respectfully requests that the Commission close all hunting and trapping around the Park. The wolves are national treasures. People just like me make a significant investment of money to see the wildlife in Montana. She loves Montana, but the wolf hunting policies do not reflect her own values or the Montanans that she has befriended over the many years of visiting Montana. She appreciates the interest of her opinion. Best regard, Diane Fentanina.

Ms. Thompson stated that the reason that she moved here was the wildlife and the people here. It was very sad to know that people are afraid to go outside their homes. They are afraid of stray bullets hitting them as they step outside their front door. She thinks that it would be a wise thing to shut the hunting in that area down. Thank you.

KC York, Trap Free Montana, stated this is the third time that the swift fox strategy has been postponed. While the conservation plan failed to address trapping, this rare animal whose population has significantly decreased from 347 from the last survey. It barely avoided the ESA in the past. The swift fox conservation plan was the one that was going to rescue them. They continue to be trapped. Why? Because the trappers want to. The worth of their pelt is the same as their weight. Seven dollars. The trapping period occurs during breeding and birthing dispersal periods. This contradicts the swift fox conservation plan. It began in 2010 when the population exceed 500 when trappers wanted to trap them. This last year the trapping was not closed until three weeks after meeting the quota. They went over quota.

The 2018 public comment was 40 to one to opposing trapping of the swift fox. It was 375 to one had opposed trapping wolves. She has been laughed at and responded to disrespectfully, treated unprofessionally and ignored. She also has been bullied, intimidated and threatened. Wildlife advocates have been silenced and their concerns dismissed. When

will decisions for wildlife be based on the best interests of the wildlife? For the public majority and the public trust doctrine? Thank you.

Marc Cooke, Wolves of the Rockies, stated he wanted to focus on the killing of the wolf 926F killing. Our legals are saying is questionable. This is clearly not the case of self-protection because the individual went looking for the wolf. He located the wolf because of a phone call at the gas station. He then leaves the gas station with a high-powered rifle to what is clearly a public road maintained by Park County for public service year-round. The hunter discharged his weapon 40 feet from the nearest house. There were no drag marks. No blood. The only blood is in the middle of the road where the animal fell. He doesn't know if the hunter was on a snowmobile or not. This is not ethical hunting. This is wrong.

Firing a weapon near houses is not only against the law but, not good sportsmanship. He gave a handout to the Commission. His point being that it is a public road. If you would look at the information that is provided, it is against the law to discharge a firearm a quarter of a mile from established residents. The hunter had so much rage in him that the comments that he made when he left the gas station was "I'm going to get that bitch". That is wrong. He thinks that is rage. That is wrong. We are Montanans. We are better than that. Not only so this a health and safety issue concern that is being investigated by the department. He has been told three times that this has been investigated. It has been investigated another time. He doesn't know what to believe. He doesn't think the Department is being transparent. We have a request in for information to get to the bottom of this. He has not received the information as of yet. We have a public road and an animal that has been habituated to humans. There is a hunter that thinks the wild west is still the wild west. Meanwhile the community is being terrorized by individuals of the next community over because they are wildlife watchers. Commissioners, we are better than this. This has long term repercussions. In February or March, we are going to be before with a wildlife stamp that you will have to approve or disapprove of no consumptive money from the wolf community and others to help Fish, Wildlife and Parks manage wildlife for all occasions. If something isn't done about this today or in the future, it puts that in jeopardy and how can he say that this is a big deal and it is going to help wolves, wildlife and other people. There are other issues that FWP must deal with. How can he go to those people if it is not in the interest of the wildlife and other issues that people care about and they value? He hopes that something good comes out of this. He requests the Commission review what he wrote. If the Commission has any questions, please let him know. Thank you.

Mark Perry, Bozeman, stated that he and family relocated to Montana in for many reasons. One reason that there was more wildlife than people. He comes from a family of farmers and hunters. Since moving to Montana, they visit Yellowstone Park about three times a year. They enjoy watching the wildlife especially the grizzlies, wolves, bison, and moose. In 2017 over 216 million dollars were spent in the Park's gateway communities. The Park visitors are coming to see wolves and grizzlies. When wolf 832or 06 was shot in December of 2012, the Park Superintendent said that this was the shot that was heard around the world. Recently the daughter of 06 was the shot that was heard around the world part two.

Many of Yellowstone's wolves are accustomed to people. There is a million plus people a year. The hunters in the Park communities know that as well. For a trophy hunter this is easy pickings as they say. Animals of the parks know no boundaries. The killing of wolf 926F was not a hunt based on what he was taught about hunting. The killing was easy pickings. This needs to be changed and a common ground needs to be found. There needs to be solutions about this, so we are not in here again under these circumstances. The Roosevelt Arch is inscribed "For the enjoyment of the people". There is no enjoyment of the people by killing the people visiting Yellowstone. This has hurt millions of people. He has received close to 200 Facebook messages and a few of these stand out. Candy M. stated "she planning to go there in March to see her sadly it was not meant to be". Kimberly A. stated "humans are destroying our world. The ecosystem is more important for my grandchildren to grow". Kevin R. stated "He doesn't despise hunters. This is disgusting. Where are you Montana?". He loves Montana. We are better than this. Thank you.

Kat Brekken, National Wolf Watcher Coalition, stated that she drove down here to see if this was going to be heard on a national stage. She has been video taping all this and it is going worldwide. This is on a Facebook stream right now with over a million followers. She has been getting texts from people all day long. People come from all over the world and spend millions of dollars. It was 600 million dollars according to the State of Montana. Most of that money was spent here because of wildlife watching. Only four percent of this country hunts. Out of the four percent. She grew up as a hunter. She grew up in this area. Her family was here homesteading before the parks were parks. This is worldwide. The world is watching us. Yellowstone has been the great ecological experiment from the get go. It is a

world heritage site. It is a world stage. People come here from all over the world. They inject money that we cannot yet measure until we get this wolf stamp. If you guys are really wanting to work with us.

It says in the Montana Legislature that everyone has a stake. To day we have heard from the elk community about their stake. She ahs felt that for over 10 years they have not had a stake either as wildlife watchers. The Commission is in the crosshairs and it is not an easy task. I know why Chairman Vermillion is leaving, he doesn't want to do this anymore after 12 years. She thinks that it is going to get worse. We have to make good decisions. We need to think long term. We can't come in here with an elk study out of four done. The world is watching. Thank you.

Chairman Vermillion stated that there was a couple of things that he wanted to touch on. The Spitfire wolf seems to have two issues. The first is if there should be hunting areas adjacent to Yellowstone Park and the Legislature has spoken very clearly to the Commission and FWP on this matter. The Commission does not have the ability to close down wolf hunting as legal pursuit of wolves in Montana. We just don't have that jurisdiction. The bigger issue here is the valid concerns about safety in and around Silvergate and Cooke City. He knows how that cabins are dispersed in the woods. This is an issue where you can petition a no shooting zone. You can't say you can shoot deer but not wolves.

If there is a significant safety concern and he truly believes that you all do, then please make the petition to the Commission or the Department. We are focused on public safety and you should state that you are concerned about public safety and not just because they are hunting wolves. It should because there are firearms being discharged around houses. That is what he would encourage you to focus on.

As far the Commission having the authority to do anything related to 313 or 316, we just don't. that is how it is. Again, you can petition. He does know the game warden in question. He thinks that he is a great warden. But, he does not the whole story one way or another. This is not the place to talk about that. You all have been very polite and civil. He appreciates that. He hopes that everyone understands where we are coming from. The meeting is going to be concluded. It has been a long day.

Vice Chairman Stuker stated he agrees with Chairman Vermillion. If it is a safety issue, then definitely bring that forward. He has supported every safety issue so please bring that forward. We don't want to see anyone get shot. We can't have a buffer zone.

Chairman Vermillion stated that Senate Bill 200 has a quota of 100. If they are in and around houses and there is reasonable concern about public safety that's where the Legislature has taken the jurisdiction away from us. Those are all the variables that we are all working with. We are going to adjourn. He is happy to talk with people after the meeting.

## *28. Adjournment*

Chairman Vermillion moved, and Commissioner Brower seconded to adjourn the meeting.

*Motion passes 5-0.*

Meeting adjourned at 5:30 PM.



Dan Vermillion, Chairman



Martha Williams, Director

